

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Orpheus and Kimberly Hanley	:	
	:	
v.	:	C-2023-3041147
	:	
Pennsylvania Power Company	:	

INITIAL DECISION

Before
Alphonso Arnold III
Administrative Law Judge

INTRODUCTION

This Initial Decision grants Pennsylvania Power Company’s Preliminary Objections and dismisses the Formal Complaint filed by Orpheus and Kimberly Hanley challenging the Company’s installation of a smart meter at their address, because the Complaint raises the same issues that have been addressed previously by the Pennsylvania Public Utility Commission in dismissing a prior complaint with prejudice filed by the Hanleys. Therefore, the Hanleys are barred by the doctrines of *res judicata*, collateral estoppel, and by Section 316 of the Pennsylvania Public Utility Code, 66 Pa.C.S. § 316, from bringing their Formal Complaint.

HISTORY OF THE PROCEEDING

On June 5, 2023, Orpheus and Kimberly Hanley (“Complainants”) filed a Formal Complaint (“Complaint”) with the Pennsylvania Public Utility Commission (“Commission”) against Pennsylvania Power Company (“Respondent”). Complainants argued that Respondent is threatening to shut off or has already shut off their service. Complainants do not want an Advanced Metering Infrastructure, i.e., “smart meter” installed in their home, arguing that they

have not requested participation in the smart meter program and exercise their right not to participate in the program. Complainants cited to Section 2807(f)(2)(i) of the Pennsylvania Public Utility Code (“Code”), 66 Pa.C.S. § 2807(f)(2)(i),¹ Section 57.251(a) of the Commission’s regulations, 52 Pa. Code § 57.251(a), and Sections 2621(d)(11) and 2621(d)(14)(A) of the Public Utility Regulatory Policies Act of 1978 §§ 2621(d)(11), (d)(14)(A), 16 U.S.C. § 46 (“PURPA”) to support their position. Complainants noted that their decision not to participate in the smart meter program is due to concerns regarding health, privacy, safety, and property protection. The Complaint was served on Respondent on June 7, 2023.

On June 27, 2023, Respondent filed an Answer with New Matter to the Complaint. Respondent admitted that it sent Complainants a termination notice on May 1, 2023, but has not terminated Complainants’ service. Citing to the recent decision in *Povacz v. Pa. Public Utility Commission*, 280 A.3d 975 (Pa. 2022) (“*Povacz*”), Respondent denied that Complainants are permitted to “opt-out” of smart meter installation at their service address. In its New Matter, Respondent asserted that Complainants already challenged Respondent’s installation of a smart meter at their address in a previous formal complaint proceeding at Docket No. C-2016-2557487 (“2016 complaint”). Respondent alleged that the Complaint concerns electric service at the same property under the same customer account that was the subject of the 2016 complaint. Respondent asserted that the 2016 complaint was dismissed by the Commission with prejudice. *See Hanley v. Pa. Power Co.*, Docket No. C-2016-2557487 (Initial Decision issued Oct. 24, 2018), *request to reopen proceedings* denied (Opinion and Order entered Dec. 19, 2019), *petition for rehearing or reconsideration* denied (Opinion and Order entered Aug. 27, 2020). Therefore, Respondent argued that Complainants are barred from filing a new formal complaint with the Commission regarding the same issues of fact and law. In this regard, Respondent in its New Matter asserts that the Complaint is barred by Section 316 of the Code, 66 Pa.C.S. § 316, and the doctrines of *res judicata* and collateral estoppel. For relief, Respondent requested that the Complaint be dismissed.

¹ This section of the Code is part of what is known as “Act 129.” This particular provision directs electric distribution companies to “furnish” smart electric technology to their customers.

The Answer and New Matter was properly endorsed with a Notice to Plead, informing Complainants that they had 20 days from the date of service of the New Matter to file an Answer to the New Matter. Complainants did not file an Answer to the New Matter.

Also on June 27, 2023, Respondent filed Preliminary Objections. Respondent argued that this was the second complaint that Complainants filed against it concerning smart meter installation and arguing that installation of a smart meter would violate Section 1501 of the Code, 66 Pa.C.S. § 1501.² Respondent argued that Complainants' requested relief (to opt-out of smart meter installation) cannot be granted by the Commission because Respondent is legally required to install smart meters and customers are not permitted to opt-out of installation. *See Povacz*. Thus, Respondent argued, the Complaint is legally insufficient, pursuant to 52 Pa. Code § 5.101(a)(4).

The Preliminary Objections were properly endorsed with a Notice to Plead, which informed Complainants that they had ten days from the date of service of the Preliminary Objections to file an Answer to the Preliminary Objections.

On July 18, 2023, Complainants filed an untimely Answer to the Preliminary Objections, stating that they are not "opting out" of smart meter installation because they never "opted in" to smart meter installation. Complainants argued that they never requested to participate in the advanced metering program and that they are concerned with their civil and constitutional rights, and with their privacy, safety, security, and health if a smart meter is installed at their home. Complainants argued that mandating smart meter installation is contrary to the language of Act 129 and PURPA.

On July 28, 2023, the undersigned was assigned as presiding officer to this proceeding. On that date, I issued an Order staying this formal proceeding. The stay was issued in compliance with the Commission's November 4, 2020, Order which ordered that any formal

² Section 1501 provides, in part: "Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. 66 Pa.C.S. § 1501.

complaint filed with the Commission on or after November 4, 2020, challenging an electric distribution company's deployment of smart meter technology as being in violation of Section 1501 of the Code, be stayed until the Commission takes further action to lift the stay. *See, Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered Nov. 4, 2020). The Commission lifted this stay by Order entered November 14, 2023, at that docket.

On November 20, 2023, I issued an Order lifting the stay in this proceeding.

Respondent's Preliminary Objections are procedurally ready to be ruled upon and, for the reasons discussed below, will be granted.

FINDINGS OF FACT

1. Complainants in this proceeding are Orpheus and Kimberly Hanley.
2. Respondent in this proceeding is the Pennsylvania Power Company.
3. On June 5, 2023, Complainants challenged the installation of a smart meter at their address due to health, privacy, safety, and property protection concerns.
4. On June 27, 2023, Respondent filed an Answer with New Matter to the Complaint and in its Answer argued that it is legally required to install a smart meter at Complainants' address.
5. In its New Matter, Respondent argued that the Complaint is barred by Section 316 of the Code, 66 Pa.C.S. § 316, and the doctrines of *res judicata* and collateral estoppel because Complainants already challenged smart meter installation at their home in a prior proceeding at Docket No. C-2016-2557487 wherein the Commission dismissed their Complaint with prejudice.
6. Complainants did not file an Answer to Respondent's New Matter.

7. Also on June 27, 2023, Respondent filed Preliminary Objections to the Complaint stating that the Complaint should be dismissed as being legally insufficient, pursuant to 52 Pa. Code § 5.101(a)(4), because the Commission cannot grant Complainants' request for relief (to opt-out of smart meter installation).

8. On July 19, 2016, Complainants filed a Complaint with the Commission, at Docket No. C-2016-2557487, seeking to opt-out of smart meter installation at their home arguing that installation of a smart meter at their home would constitute unsafe and unreasonable service pursuant to Section 1501 of the Code.

9. The Complaint filed at Docket No. C-2016-2557487 concerns electric service at the same property under the same customer account that is the subject of the Formal Complaint proceeding at Docket No. C-2023-3041147.

10. On December 19, 2019, the Commission entered an Opinion and Order at Docket No. C-2016-2557487 adopting the Initial Decision of the Administrative Law Judge, dismissing Complainants' complaint filed at that docket.

11. On August 27, 2020, the Commission entered an Opinion and Order at Docket No. C-2016-2557487 denying Complainants' petition for rehearing or reconsideration of the complaint filed at that docket.

DISCUSSION

Preliminary Objections

The Commission's Rules of Practice and Procedure permits parties to file preliminary objections. The grounds for preliminary objections are set forth as follows:

- (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 preliminary objection practice is similar to Pennsylvania civil practice. *Equitable Small Transp. Interveners v. Equitable Gas Co.*, Docket No. C-00935435 (Opinion and Order entered July 18, 1994). When considering the preliminary objection, the Commission must determine “whether the law says with certainty, based on well-pleaded factual averments . . . that no recovery or relief is possible. *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.” *Dept. of Auditor Gen. v. State Emps Ret. Sys.*, 836 A.2d 1053, 1064 (Pa. Cmwlth. 2003) (citing *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 Emps. Ret. Bd.*, 690 A.2d 1312 (Pa. Cmwlth. 1997).

Complainants in their Complaint seek to refuse or “opt-out” of smart meter installation³ at their home and cite to Act 129, the Commission’s regulations, and PURPA⁴ to support their position. Complainants noted that their decision not to participate in the smart meter program is due to concerns regarding health, privacy, safety, and property protection.

Respondent’s Preliminary Objections assert that the Complaint should be dismissed on the ground of legal insufficiency. *See* 52 Pa. Code § 5.101(a)(4). Citing to *Povacz*, Respondent argued that Complainants cannot opt-out of smart meter installation as Respondent is mandated by Act 129 to install a smart meter at Complainants’ home. Thus, Respondent argued that Complainants’ request for relief, i.e., to opt-out of smart meter installation, cannot be granted by the Commission and thus the Complaint is legally insufficient.

Respondent is correct in that the Pennsylvania Supreme Court in its recent decision in *Povacz* concluded that Act 129 mandates the system-wide installation of smart meter technology by electric distribution companies. As such, Complainants cannot refuse or “opt-out” of smart meter installation at their home. However, the Court also stated that customers may file a complaint with the Commission raising a claim that installation of a smart meter at their address violates Section 1501 of the Code. In their Complaint, Complainants raised health, privacy, safety, and property protection concerns regarding the installation of a smart meter at their home. Given that Complainants raised an argument in their Complaint that installation of a smart meter at their home violates Section 1501 of the Code, I find that the Complainants’ Complaint is legally sufficient. Therefore, as it pertains to an alleged Section 1501 violation, the Complaint will not be dismissed on the ground that it is legally insufficient. As noted by Respondent in its Preliminary Objections, the Commission may direct an electric distribution

³ Although Complainants argue in their Answer to Respondent’s Preliminary Objections that they are not “opting out” because they never “opted in,” attempting to refuse smart meter installation under the belief that smart meter installation is not mandatory and is voluntary is essentially an attempt to opt-out of smart meter installation.

⁴ Concerning Complainants’ reliance on PURPA for their position that smart meter installation is not mandatory, “PURPA ... explicitly provides that it does not preempt state law,” noting: “Nothing in this chapter prohibits any State regulatory authority or nonregulated electric utility from adopting, pursuant to State law, any standard or rule affecting electric utilities which is different from any standard established by this subchapter” and that it was “indicative of Congress’s objective to allow states to regulate how they choose.” *Romeo v. Pa. Pub. Util. Comm’n*, 154 A.3d 422, 428 (Pa. Cmwlth. 2017).

company to provide a customer with a reasonable accommodation if the customer meets their burden of proof as it relates to the installation of a smart meter at their home being in violation of Section 1501.

Res judicata, collateral estoppel, and Section 316 of the Code

Complainants in their current Complaint did not make mention of the 2016 complaint.⁵ In Respondent's New Matter, Respondent argued that Complainants previously sought to prevent smart meter installation at their address in the 2016 complaint. Respondent argued in its New Matter that in the 2016 complaint Complainants sought to prevent smart meter installation at the same property under the same customer account that is the subject of this present Complaint. Respondent noted in its New Matter that the 2016 complaint was dismissed by the Commission with prejudice. Section 5.63(b) of the Commission's regulations provide that "Failure to file a timely reply to new matter may be deemed in default and relevant facts stated in the new matter may be deemed to be admitted." 52 Pa. Code § 5.63(b). Since Complainants failed to file an answer to the New Matter, the facts alleged in Respondent's New Matter are deemed admitted. Respondent additionally argued in its New Matter that given the Commission's dismissal of the 2016 complaint with prejudice, that Complainants are barred from relitigating the same or related factual and legal issues. As such, Respondent argued in its New Matter that the Complaint is barred pursuant to the doctrines of *res judicata* and collateral estoppel, in addition to Section 316 of the Code.

The doctrines of *res judicata* and collateral estoppel apply to preclude collateral attack of final orders rendered in proceedings brought before the Commission. *O'Toole v. Bell Tel. Co.*, 77 Pa.P.U.C. 98 (1992) ("*O'Toole*").

The doctrine of *res judicata*, also known as claim preclusion, reflects the refusal of the law to allow the re-litigation of a claim in a subsequent cause of action arising between the same parties on the same claim after a court of competent jurisdiction has rendered a final

⁵ Complainants did make mention of the prior 2016 complaint in their Answer to Respondent's Preliminary Objections.

judgment on the merits in a previous case. *Hopewell Estates, Inc. v. Kent*, 646 A.2d 1192 (Pa. Super. 1994). For the doctrine to apply, four conditions 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 and capacity of the parties suing or sued. *Day v. Volkswagenwerk Aktiengesellschaft*, 464 A.2d 1313, 1316 (Pa. Super. 1983) (“*Day*”); *O’Toole*.

The doctrine of collateral estoppel, also known as issue preclusion, prevents a question of law or an issue of fact that has been once litigated and adjudicated finally in a court of competent jurisdiction from being relitigated in a subsequent suit. The four conditions that must be met for this doctrine to apply 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 question in the prior action. *Day*, 464 A.2d at 1319. As a doctrine of issue preclusion, collateral estoppel seeks to prevent the re-litigation of a finally litigated issue in a subsequent proceeding between the same parties. *Baker v. Pa. Human Relations Comm’n*, 462 A.2d 881 (Pa. Cmwlt. 1983).

Additionally, it is well settled that a party is precluded from relitigating that which has been litigated and for which a final order of the Commission has been issued. Section 316 of the Code, 66 Pa.C.S. § 316, expressly establishes the finality of Commission action.

Section 316 states in relevant part:

[w]henever 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. 66 Pa.C.S. § 316 precludes a collateral attack upon a Commission order that has not been reversed upon appeal. *Lehigh Valley Power Comm. v. Pa. Pub. Util. Comm’n*, 563 A.2d 548 (Pa. Cmwlt. 1989) (“*Lehigh*”).

Res judicata and collateral estoppel are affirmative defenses that should be raised in New Matter pursuant to Section 5.62(b) of the Commission's regulations. 52 Pa. Code § 5.62(b).⁶ As noted, Respondent raised the affirmative defenses of *res judicata* and collateral estoppel in its New Matter. Since *res judicata* and collateral estoppel are affirmative defenses, and Respondent properly raised the defenses in its New Matter, Respondent's Preliminary Objections will be treated as a Motion for Judgment on the Pleadings filed pursuant to 52 Pa. Code § 5.102, and I will consider the issue of the previously litigated case at C-2016-2557487 in order to secure a just, speedy and inexpensive determination of this proceeding, pursuant to 52 Pa. Code § 1.2(a). This will not adversely affect Complainants' substantive rights, pursuant to 52 Pa. Code § 1.2(c) because Complainants had notice of the issues and an opportunity to respond.⁷

The Commission's Rule of Practice and Procedure at 52 Pa. Code § 5.102 governs Motions for Judgment on the Pleadings. 52 Pa. Code § 5.102. The Commission will grant a Motion for Judgment on the Pleadings only if the pleadings show there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law. 52 Pa. Code § 5.102(d)(1). Only in a case where the moving party's right to prevail is so clear that a trial would be a fruitless exercise should judgment on the pleadings be granted. *Williams v. Lewis*, 466 A.2d 682 (Pa. Super. 1983); *Service Emps. Int'l Union, Local 69, AFL-CIO v. The Peoples Nat. Gas Co., d/b/a Dominion Peoples*, Docket No. C-20028539 (Opinion and Order entered Dec. 19, 2003). In ruling on a Motion for Judgment on the Pleadings, the tribunal must consider as true all well-pleaded averments of the party against whom the motion is directed and consider against him only those facts he specifically admits. Judgment on the pleadings should be entered

⁶ Section 5.62(b) provides: “**(b) Answers raising new matter.** An affirmative defense shall be pleaded in an answer or other responsive pleading under the heading of “New Matter.” A party may set forth as new matter another material fact which is not merely a denial of the averments of the preceding pleading.” 52 Pa. Code § 5.62(b).

⁷ Respondent's Answer with New Matter, that raised the *affirmative defenses* of *res judicata* and collateral estoppel, as well as 66 Pa.C.S. § 316, contained a Notice to Plead and Complainants did not file an Answer to the New Matter.

only when the case is clear and free from doubt. *Reuben v. O'Brien*, 496 A.2d 913 (Pa. Super 1985).

The Complaint concerns the same property under the same customer account that was the subject of the 2016 complaint. Complainants in both complaints request to opt-out of Respondent installing a smart meter at their property, arguing that the law does not mandate smart meter installation and that installation of a smart meter at their home would raise privacy and health and safety concerns.⁸ An evidentiary hearing was held concerning the 2016 complaint, where Complainants had the full opportunity to present evidence and be heard regarding their privacy, health, and safety concerns surrounding the proposed smart meter installation at their home. Indeed, at the hearing, Complainants presented testimony and argument about their claim pertaining to the smart meter mandate and opting out of the smart meter installation, their privacy allegations, and were afforded the opportunity to present testimony about their health and safety concerns. Following the hearing, the assigned Administrative Law Judge (“ALJ”) issued a decision dismissing the Complainants’ 2016 complaint with prejudice, finding that Complainants failed to satisfy their burden of proof. *Hanley v. Pa. Power Co.*, Docket No. C-2016-2557487 (Initial Decision issued Oct. 24, 2018). The Commission entered an Opinion and Order denying Complainants’ request to reopen the 2016 complaint proceedings and adopting the ALJ’s decision. *Hanley v. Pa. Power Co.*, Docket No. C-2016-2557487 (Opinion and Order entered Dec. 19, 2019). The Commission further denied Complainants’ petition for rehearing or reconsideration of the 2016 complaint matter. *Hanley v. Pa. Power Co.*, Docket No. C-2016-2557487 (Opinion and Order entered Aug. 27, 2020).

All four conditions required for a finding of *res judicata* have been met: 1) the issues are identical (both complaints pertain to the installation of a smart meter at Complainants’ home); 2) the causes of action are identical (complainants in both complaints wish to opt-out of smart meter installation, arguing that Act 129 does not mandate smart meter installation and that

⁸ Complainants’ claim that smart meter installation would raise privacy, health, and safety concerns is a claim that smart meter installation would result in unsafe and unreasonable service pursuant to 1501 of the Code.

installation of a smart meter would violate Section 1501 of the Code); 3) the persons and parties to the action are identical (both complaints involve Orpheus and Kimberly Hanely as Complainants and the Pennsylvania Power Company as Respondent); and 4) the quality and capacity of the parties suing or sued are also identical (as the parties are the same in both complaints, the quality and capacity of the parties suing or sued are identical).

Additionally, all four conditions required for a finding of collateral estoppel have also been met: 1) the issue decided in the prior adjudication is identical with the one presented in the later action (both complaints pertain to the installation of a smart meter at Complainants' home); 2) there was a final judgment on the merits (the Commission entered an Opinion and Order dismissing the 2016 complaint with prejudice); 3) the party against whom the plea is asserted was a party or in privity with the party to the prior adjudication (both complaints involve Orpheus and Kimberly Hanely as Complainants); and 4) the party against whom the plea is asserted has had a full and fair opportunity to litigate the issues in question in the prior action (the Complainants participated in an evidentiary hearing in the 2016 complaint matter where they had the opportunity to present their case).

Furthermore, Complainants' Complaint is also barred pursuant to 66 Pa.C.S. § 316 as it raises the same issues before the Commission a second time. The Commission's Opinion and Order dismissing the 2016 complaint with prejudice remains conclusive upon all parties to that proceeding, which includes Complainants and Respondent.

In conclusion, Complainants are barred from bringing this Complaint by virtue of the Commission's final action at Docket No. C-2016-2557487. Respondent's Preliminary Objections, treated as a Motion for Judgment on the Pleadings, will be granted. The Commission is granted discretion to 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), 52 Pa. Code § 5.21(d). A hearing is necessary only to resolve disputed questions of fact, and when the question presented is one of law, the Commission need not hold a hearing. *Lehigh; Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth 1993). The Complainants' Complaint will be dismissed in the Ordering paragraphs below.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter in this proceeding. 66 Pa.C.S. § 701.

2. The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary objections. 52 Pa. Code § 5.101.

3. When considering preliminary objections, the Commission must determine "whether the law says with certainty, based on well-pleaded factual averments . . . that no recovery or relief is possible. *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa. Cmwlth. 1996).

4. The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary objections on the ground of legal insufficiency of a pleading. 52 Pa. Code § 5.101(a)(4).

5. The Commission's Rules of Administrative Practice and Procedure permit the filing of Motions for Judgment on the Pleadings. 52 Pa. Code § 5.101.

6. The Commission will grant a Motion for Judgment on the Pleadings only if the pleadings show there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law. 52 Pa. Code § 5.102(d)(1).

7. An affirmative defense shall be pleaded in an answer or other responsive pleading under the heading of "New Matter." A party may set forth as new matter another material fact which is not merely a denial of the averments of the preceding pleading." 52 Pa. Code § 5.62(b).

8. Failure to file a timely reply to new matter may be deemed in default and relevant facts stated in the new matter may be deemed to be admitted. 52 Pa. Code § 5.63(b).

9. The doctrine of *res judicata* applies when four conditions are 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 and capacity of the parties suing or sued. *Day v. Volkswagenwerk Aktiengesellschaft*, 464 A.2d 1313, 1316 (Pa. Super. 1983).

10. The doctrine of collateral estoppel applies when four conditions are met: (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 question in the prior action. *Day v. Volkswagenwerk Aktiengesellschaft*, 464 A.2d 1313, 1319 (Pa. Super. 1983).

11. The doctrines of *res judicata* and collateral estoppel apply to preclude collateral attack of final orders rendered in proceedings brought before the Commission. *O'Toole v. Bell Tel. Co.*, 77 Pa.P.U.C. 98 (1992).

12. 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. 66 Pa.C.S. § 316.

13. 66 Pa.C.S. § 316 precludes a collateral attack upon a Commission order that has not been reversed upon appeal. *Lehigh Valley Power Comm. v. Pa. Pub. Util. Comm'n*, 563 A.2d 548, 556 (Pa. Cmwlt. 1989).

14. The Commission is granted discretion to 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), 52 Pa. Code § 5.21(d).

15. A hearing is necessary only to resolve disputed questions of fact, and when the question presented is one of law, the Commission need not hold a hearing. *Lehigh Valley Power Comm. v. Pa. Pub. Util. Comm'n*, 563 A.2d 548, 556 (Pa. Cmwlth. 1989); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth 1993).

16. The conditions of *res judicata*, collateral estoppel, and 66 Pa.C.S. § 316 have been met.

17. Complainants are barred from bringing this Complaint by virtue of the Commission's final action at Docket No. C-2016-2557487 and thus a hearing in this matter is not necessary.

ORDER

THEREFORE,

IT IS ORDERED:

1. That Pennsylvania Power Company's Preliminary Objections, treated as a Motion for Judgement on the Pleadings, in the matter of Orpheus and Kimberly Hanley v. Pennsylvania Power Company, at Docket No. C-2023-3041147, are sustained.

2. That the Formal Complaint filed by Orpheus and Kimberly Hanely at Orpheus and Kimberly Hanley v. Pennsylvania Power Company, at Docket No. C-2023-3041147 is dismissed with prejudice.

