

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Craig Bowes	:	
	:	
v.	:	C-2020-3020990
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Emily A. Farren
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Formal Complaint filed by an electric service customer who challenged the installation of a smart meter. The Formal Complaint raised the same issues previously addressed by the Pennsylvania Public Utility Commission in a prior action that resulted in a settlement agreement. Therefore, Complainant is barred by Section 316 of the Public Utility Code, 66 Pa.C.S. § 316, from bringing his Formal Complaint.

HISTORY OF THE PROCEEDING

On June 25, 2020, Craig Bowes (Complainant or Mr. Bowes) filed a Formal Complaint (Complaint) against PPL Electric Utilities Corporation (PPL or Company) with the Pennsylvania Public Utility Commission (Commission). Mr. Bowes

checked the box “other” on the Formal Complaint form with no further explanation. Complaint, ¶ 4.

For relief, Mr. Bowes requested:

In reference to the proceedings mentioned above, we had accepted PPL’s offer to delay the installation of a smart meter on our home until June 30th of 2020 Due to all of these unusual and unforeseen circumstances and the uncertainty of when these restrictions will be lifted, or possibly of reapplication of the restrictions, we are requesting a reasonable accommodation of additional time for us to relocate to a safer living situation.

Id., ¶ 5.

On August 12, 2020, PPL filed an Answer with New Matter to the Complaint. In its Answer, PPL admitted or denied the allegations of the Complaint. Specifically, PPL admitted that it planned to install a new Radio Frequency Mesh meter (*i.e.* smart meter). Answer, ¶ 4. PPL denied that Complainant is entitled to any further relief, as the parties reached a settlement agreement in Complainant’s initial complaint at Docket No. C-2018-3006101 (2018 proceeding). *Id.*

PPL further elaborated in New Matter that the parties reached a settlement agreement during the 2018 proceeding. New Matter ¶ 4. Thereafter, PPL filed a Certificate of Satisfaction and Complainant never objected. *Id.* ¶¶ 7-8 (emphasis in original). PPL argued Section 316 of the Public Utility Code prevents a complainant from re-litigating the same issues that were resolved when PPL filed a Certificate of Satisfaction. 66 Pa.C.S. § 316; New Matter ¶¶ 11-16.

The Answer with New Matter contained a Notice to Plead for Mr. Bowes to file a Response to PPL's New Matter within 20 days of service. Mr. Bowes did not file a Response to PPL's New Matter.

Also on August 12, 2020, PPL filed Preliminary Objections to the Complaint. PPL argued that the Complaint is barred by Section 316 of the Public Utility Code. Preliminary Objections, ¶ 17. The Company requested that the Complaint be dismissed in its entirety with prejudice, pursuant to Section 5.101 of the Commission's regulations. 52 Pa. Code § 5.101(a)(4); Preliminary Objections, *generally*.

The Preliminary Objections contained a Notice to Plead for Mr. Bowes to file an Answer to PPL's Preliminary Objections within 10 days of service. On September 3, 2020, Mr. Bowes filed an Answer to PPL's Preliminary Objections. Mr. Bowes acknowledges that he "entered into the original agreement based on world conditions as they existed at that specific moment in time" and renews his request "for time lost due to this pandemic." Answer to Preliminary Objections. Mr. Bowes did not address PPL's argument that Section 316 of the Public Utility Code bars this Complaint. *Id.*

On September 28, 2020, the Commission's Office of Administrative Law Judge (OALJ) issued a Motion Judge Assignment Notice, assigning this matter to Administrative Law Judge (ALJ) Elizabeth H. Barnes.

By Order entered on November 4, 2020, the Commission stayed certain smart meter formal complaints, including this matter. *Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered Nov. 4, 2020).

On June 13, 2022, OALJ issued a Judge Change Notice, assigning this matter to ALJ Dennis J. Buckley.

By Order entered November 14, 2023, the Commission lifted the stay of certain smart meter formal complaints, including this matter. *Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered Nov. 14, 2023).

On December 15, 2023, OALJ issued a Call-in Telephone Prehearing Conference Notice informing parties that a prehearing conference would be held on February 20, 2024 at 10:00 A.M. The parties convened on February 20, 2024, and ALJ Buckley instructed the parties to discuss the matter between themselves. Tr. 4. PPL was to advise ALJ Buckley of the progress of discussions within 30 days. *Id.*

On March 19, 2024, OALJ issued a Hearing Notice informing parties that a hearing would be held on May 15, 2024, at 10:00 A.M. On May 8, 2024, OALJ issued a Hearing Cancellation Notice of the May 15th hearing.

On June 13, 2024, OALJ issued a Hearing Notice informing parties that a hearing would be held on August 13, 2024, at 10:00 A.M. Complainant requested a continuance of the August 13 hearing. On November 12, 2024, OALJ issued an Evidentiary Hearing Notice informing parties that a hearing would be held on December 23, 2024, at 10:00 A.M.

On December 19, 2024, ALJ Buckley issued an order that changed the evidentiary hearing to argument on PPL's Preliminary Objections and Complainant's Answer thereto.

On December 23, 2024, the parties convened before ALJ Buckley. Tr. 8. ALJ Buckley asked the Complainant to describe how the instant Complaint differed from that of the 2018 complaint. Tr. 11. Complainant responded:

Is there a big difference? Legally, I don't know the answer to that. The only thing is we were unable to look for a home because basically the world was on lockdown for quite a while So, definitively, I could not say.

Tr. 12.

PPL argued the instant Complaint reraised the same allegations from the 2018 complaint and requested the same relief, *i.e.* that PPL give Complainant time to relocate prior to the installation of a smart meter at his residence. Tr. 18-19.

On January 7, 2025, the transcript of the oral argument on PPL's Preliminary Objections was filed with the Commission.

On April 23, 2025, OALJ issued a Judge Change – Assignment Notice, assigning this matter to me.¹

This matter is now ripe for decision.

FINDINGS OF FACT

1. Complainant is Craig Bowes who resides at 1531 N. 19th Street, Allentown, Pennsylvania (service address).
2. Respondent is PPL Electric Utilities Corporation.

¹ The record does not reflect any other activity between the January 7, 2025, transcript filing and the April 23, 2025, judge change notice.

3. On November 15, 2018, Complainant filed a prior formal complaint against Respondent. *Bowes v. PPL Elec. Utils Corp.*, Docket No. C-2018-3006101 (Certificate of Satisfaction filed Dec. 6, 2019) (2018 Complaint).

4. Complainant's prior formal complaint challenged the installation of a smart meter at his service address due to health concerns. (2018 Complaint).

5. As relief in his 2018 Complaint, Complainant requested that Respondent refrain from installing a smart meter at his service address. (2018 Complaint).

6. On December 5, 2019, Complainant and Respondent reached a settlement agreement that resolved the prior formal complaint. (2018 Complaint).

7. The settlement agreement provided that PPL would refrain from installing a smart meter until June 30, 2020, in exchange for withdrawal of the complaint, with prejudice. (2018 Complaint; 2018 Complaint Tr. 9-10).

8. On December 6, 2019, Respondent filed a Certificate of Satisfaction.

9. Complainant never objected to the Certificate of Satisfaction of the 2018 Complaint.

10. On June 25, 2020, Complainant filed a Formal Complaint at the instant docket challenging the installation of a smart meter at his service address, citing health concerns.

11. As relief, Complainant requested further delay of a smart meter installation at Complainant's service address.

12. On August 12, 2020, Respondent filed an Answer with New Matter.
13. Complainant did not file a response to Respondent's New Matter.
14. On August 12, 2020, Respondent filed Preliminary Objections.
15. On September 3, 2020, Complainant filed an untimely Answer to PPL's Preliminary Objections.

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).

Here, the Respondent's Preliminary Objections assert that the Complaint is legally insufficient, pursuant to Section 5.101 of the Commission's regulations, in that the Complaint raises the same issues and claims raised in the complaint at Docket No. C-2018-3006101. 52 Pa. Code § 5.101(a)(4). I disagree that preliminary objections are the appropriate vehicle to analyze the application of Section 316 of the Public Utility Code. 66 Pa.C.S. § 316; 52 Pa. Code § 5.101(a)(4); *see, e.g., Raintree Farm Solar v. PPL Elec. Utils. Corp.*, Docket No. C-2017-2621826 (Order entered Jan. 16, 2018). However, the Respondent also raised its Section 316 argument in New Matter.

The Commission's regulations at Section 1.2 provides that the presiding officer or the Commission may disregard an error or defect of procedure which does not affect the substantive rights of the parties. 52 Pa. Code § 1.2(a). Since the Respondent raised the issue of the previously litigated case in both its New Matter and Preliminary Objections in this case, the Complainant had notice of the issue. Moreover, Section 5.62 of the Commission's regulations allow a respondent to seek relief against other parties in a proceeding if common questions of law or fact are present. 52 Pa. Code § 5.62(a). Such an affirmative defense must be plead in an Answer with New Matter, which PPL did here. 52 Pa. Code § 5.62(b); Answer with New Matter.

Thus, I will treat the Respondent's preliminary objections concerning application of Section 316 of the Public Utility Code as a motion for judgment on the pleadings. I will consider the issue of the previously litigated case at Docket No. C-2018-3006101 to secure a just, speedy and inexpensive determination of this proceeding.

Standards for granting a motion for judgment on the pleadings

Section 5.102 of the Commission's regulations governs motions for judgment on the pleadings. 52 Pa. Code § 5.102. Generally, the moving party bears a heavy burden of showing that no genuine issue of material fact exists and that it is entitled to a judgment as a matter of law.

The Commission must view the record in the light most favorable to the non-moving party, giving that party the benefit of all reasonable inferences. *First Mortgage Co. of Pa. v. McCall*, 459 A.2d 406 (Pa. Super. 1983); *Mertz v. Lakatos*, 381 A.2d 497 (Pa. Cmwlth. 1978). It must accept as true all well pleaded statements of fact of the non-moving party and consider only those facts that the non-moving party specifically admits. *Weik v. Estate of Brown*, 794 A.2d 907 (Pa. Super. 2002). All doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. *Thomson Coal Co. v. Pike Coal Co.*, 412 A.2d 466 (Pa. 1979). 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. 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). Judgment on the pleadings should be entered only when the case is clear and free from doubt. *Reuben v. O'Brien*, 496 A.2d 913 (Pa. Super 1985).

The Commission previously addressed the issue of whether a complainant can refile the same complaint after failing to timely object to a certificate of satisfaction resolving his or her dispute. In *Reynolds v. PPL Electric Utilities Corp.*, Docket No. C-2011-2255268 (Opinion and Order entered Jan. 5, 2012) (*Reynolds*), the Commission

reviewed an initial decision which dismissed a complaint on the grounds of *res judicata*, for raising matters previously resolved through a certificate of satisfaction. While ruling that *res judicata* was not an appropriate ground for dismissal since there had been no final judgment on the merits, the Commission found that Section 316 prohibited a complainant from raising the same issues before the Commission a second time. *Reynolds*.

The Public Utility Code at Section 316 states in part:

Whenever the [c]ommission 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.

In its ruling that Section 316 was applicable, the Commission concluded that a certificate of satisfaction, which was not objected to, and resulted in the closing of the case, conclusively determined that the issues had been resolved to the satisfaction of the complainant. *Reynolds*. Accordingly, a complainant could not file another complaint raising the same issues because the issues had already been resolved through the certificate of satisfaction. *Id.*

Similarly, in *Creehan v. Duquesne Light Co.*, Docket No. C-2012-2297124 (Opinion and Order entered May 23, 2013) (*Creehan*), the Commission affirmed its prior ruling in *Reynolds* and held that Section 316 precluded a complainant from raising issues a second time that had been settled in a previous proceeding. In *Creehan*, the complainant attempted to relitigate the same issues that he had raised in a prior case after he became dissatisfied with his prior settlement of the issues. *Id.* However, he did not object to the certificate of satisfaction filed in the previous action within ten days. *Id.* As

part of the settlement, Mr. Creehan accepted a credit. *Id.* The Commission held that a complainant cannot accept the prior settlement credit, fail to object to the certificate of satisfaction, and then pursue the same claims in a second complaint. *Id.*

Finally, in *Wright v. Philadelphia Gas Works*, Docket No. C-2013-2368462 (Opinion and Order entered Oct. 23, 2014) (*Wright*), the Commission followed *Reynolds* and *Creehan*. The Commission held that where the disputed amounts in the complaint had been the subject of prior complaints and the prior complaints had been resolved through a certificate of satisfaction, the complainant was precluded by Section 316 from pursuing the same high bill claims in his subsequent complaint. *Wright* (citing 66 Pa.C.S. § 316).

Analysis

On June 25, 2020, Complainant filed a Formal Complaint at the instant docket challenging the installation of a smart meter at his service address, citing health concerns. As relief, Complainant requested further delay of a smart meter installation at Complainant's service address. On August 12, 2020, Respondent filed an Answer with New Matter. Complainant did not file a response to Respondent's New Matter.

On August 12, 2020, Respondent filed Preliminary Objections. On September 3, 2020, Complainant filed an untimely Answer to PPL's Preliminary Objections.

Since Complainant failed to answer the Respondent's New Matter, the facts alleged in New Matter are deemed admitted, pursuant to Section 5.63(b) of the Commission's regulations. 52 Pa. Code § 5.63(b) (a party failing to file a timely reply to new matter may be deemed in default and the facts stated in the new matter may be

deemed admitted). Thus, the facts alleged in the Complaint as well as the New Matter considered together are that: (1) the Complainant previously filed a complaint at C-2018-3006101; (2) the complaint at C-2018-3006101 was settled; (3) Respondent filed a certificate of satisfaction at C-2018-3006101; and (4) pursuant to the settlement agreement, PPL did not install a smart meter at Complainant's Service Address before June 30, 2020. These facts are deemed admitted.

Next, I turn to the facts set forth in the prior complaint docketed at C-2018-3006101 to determine whether the Complaint in this case is barred by Section 316 of the Public Utility Code, 66 Pa.C.S. § 316.

On November 15, 2018, Complainant filed a prior formal complaint against Respondent. *See* 2018 Proceeding. Complainant's prior formal complaint challenged the installation of a smart meter at his service address due to health concerns. 2018 Proceeding; New Matter ¶ 3. As relief, Complainant requested that Respondent refrain from installing a smart meter at his service address. 2018 Proceeding. On December 5, 2019, Complainant and Respondent reached a settlement agreement that resolved the prior formal complaint. 2018 Proceeding; New Matter ¶¶ 4-5. The settlement agreement provided that PPL would refrain from installing a smart meter until June 30, 2020, in exchange for withdraw of the complaint, with prejudice. 2018 Proceeding; New Matter ¶¶ 4-5. On December 6, 2019, Respondent filed a Certificate of Satisfaction. 2018 Proceeding; New Matter ¶ 7. Complainant never objected to the Certificate of Satisfaction. 2018 Proceeding; New Matter ¶ 8.

Section 316 of the Public Utility Code prohibits the Complainant from raising the same issues before the Commission a second time. 66 Pa.C.S. § 316. The Certificate of Satisfaction filed by Respondent at C-2018-3006101 was not objected to by the Complainant and resulted in the closing of the case at that docket. The issues were resolved to the satisfaction of the Complainant, who accepted an agreed upon the delay of

installation date to June 30, 2020, pursuant to the settlement agreement. Respondent did not install a smart meter prior to June 30, 2020.² Accordingly, the Complainant cannot file another complaint raising the same issues because the issues were resolved through the certificate of satisfaction.

Since Section 316 of the Public Utility Code bars the claims raised in the Complaint, the Complaint will be dismissed in the Ordering paragraphs below.

CONCLUSIONS OF LAW

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

2. In ruling on a motion for judgment on the pleadings, the Commission must view the record in the light most favorable to the non-moving party, giving that party the benefit of all reasonable inferences. *First Mortgage Co. of Pa. v. McCall*, 459 A.2d 406 (Pa. Super. 1983); *Mertz v. Lakatos*, 381 A.2d 497 (Pa. Cmwlth. 1978).

3. The Commission must accept as true all well pleaded statements of fact of the non-moving party and consider only those facts that the non-moving party specifically admits. *Weik v. Estate of Brown*, 794 A.2d 907 (Pa. Super. 2002).

² Testimony taken at the December 23, 2024, argument on PPL's Preliminary Objections and Complainant's Answer thereto indicated that PPL had still not installed a smart meter at the service address. Tr. 17.

4. All doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. *Thomson Coal Co. v. Pike Coal Co.*, 412 A.2d 466 (Pa. 1979).

5. A complainant will be prohibited from raising the same issues before the Commission a second time. 66 Pa.C.S. § 316.

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. It is in the public interest that the Complaint filed at Docket No. C-2020-3020990 is dismissed without hearing. 66 Pa.C.S. § 703(b).

ORDER

THEREFORE,

IT IS ORDERED:

1. That PPL Electric Utilities Corporation's motion for judgment on the pleadings, in the matter of *Craig Bowes v. PPL Electric Utilities Corporation*, Docket No. C-2020-3020990, is granted.

2. That the Formal Complaint filed by Craig Bowes in *Craig Bowes v. PPL Electric Utilities Corporation*, Docket No. C-2020-3020990, is dismissed.

