

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jonathan DiBello

v.

PECO Energy Company

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C-2025-3056972

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This Initial Decision sustains the Preliminary Objection of PECO Energy Company and dismisses the Formal Complaint of Jonathan DiBello: 1) because his request that PECO Energy Company stay its termination proceedings pending the Commission’s final determination in *Jonathan DiBello v. PECO Energy Company* at Docket No. C-2025-3054440 is moot; and 2) because the provisions of 66 Pa.C.S. § 316, and the legal doctrines of *res judicata* and collateral estoppel preclude his request for a stay of termination proceedings pending the adjudication of his appeal of the Commission’s Opinion and Order entered on December 7, 2023, in *Jonathan DiBello v. PECO Energy Company*, at Docket No. C-2023-3041825.

HISTORY OF THE PROCEEDING

On August 7, 2025, Jonathan DiBello, (Complainant or Mr. DiBello) filed a Formal Complaint (Present Complaint) against PECO Energy Company (PECO, Respondent or Company) with the Pennsylvania Public Utility Commission (Commission). In his Complaint, Mr. DiBello alleged that the utility is threatening to shut off his service. As relief, the Complainant requests a stay of the termination proceeding because: 1) he has another Complaint against PECO pending before the Commission at Docket No. C-2025-3054440; and 2) he has appealed the Commission's Final Order at Docket No. C-2023-3041825 to the Commonwealth Court, Case No. 159-CD-2024.

The Present Complaint was served on PECO on August 21, 2025.

On September 10, 2025, the Respondent filed an Answer and New Matter, along with a Notice to Plead. In its Answer, the Respondent denied all material allegations of fact and conclusions of law in the Complaint. In particular, PECO alleged that Complainant established electrical service at 813 Lafayette Ave., 1st Rear, Prospect Park, PA 19076, in May 2021. The Complainant has not made a payment towards his account with PECO since July 18, 2023, and he has accumulated an outstanding balance of \$5,345.28. PECO further explained that on July 28, 2025, the Company issued a Ten-Day Shut Off Notice to the Complainant. According to PECO, the initiation of termination proceedings for nonpayment of an undisputed delinquent account was proper. PECO argues that it is not required to stay termination proceedings while awaiting the Commission's final ruling on a previous complaint because the pending complaint does not involve a billing dispute. Furthermore, PECO argues that it is not required to stay a termination pending an appeal in the Commonwealth Court of Pennsylvania, noting that Complainant's appeal does not involve termination of services, but his ability to obtain a payment agreement, while in Chapter 13 bankruptcy.

In its New Matter, PECO alleged that on September 22, 2022, the Complainant filed a Chapter 13 Bankruptcy Petition in the Eastern District of Pennsylvania under Case No. 22-12547. PECO added that Mr. DiBello's Chapter 13 Bankruptcy Petition is active and pending, thus pre-empting the Commission from establishing a payment arrangement on the outstanding balance owed by the Complainant to PECO. Nevertheless, Mr. DiBello filed a formal Complaint against PECO, at Docket No. C-2023-3041825 (*2023 Complaint*) requesting a payment arrangement. An Initial Decision issued on September 23, 2023, denied Mr. DiBello's request for a payment arrangement because his Chapter 13 Bankruptcy Petition is active and pending. By Opinion and Order entered on December 7, 2023 (*December 2023 Order*) the Commission denied Complainant's Exceptions to the Initial Decision issued on September 23, 2023. In addition, PECO explains that Mr. DiBello appealed the Commission's *December 2023 Order* to the Commonwealth Court of Pennsylvania where it is currently pending at Docket No. 159-CD-2024.

Further in its New Matter, PECO averred that on April 7, 2025, the Complainant filed another formal Complaint against PECO under Docket Number C-2025-3054440 (*First 2025 Complaint*), requesting a Stay of termination proceedings while his appeal of the Commission's December 2023 Order is pending in the Commonwealth Court of Pennsylvania at Docket No. 159-CD-2024. On June 12, 2025, the Commission issued the Initial Decision of Administrative Law Judge (ALJ) F. Joseph Brady, which granted PECO's Preliminary Objections and dismissed the Complaint, with prejudice. The Initial Decision concluded that the Commission lacks jurisdiction to grant a stay of the termination proceedings pending the appeal before the Commonwealth Court. On July 2, 2025, the Complainant filed Exceptions, which were pending before the Commission as of September 10, 2025, the date of the filing of the Answer and New Matter.

Also on September 10, 2025, PECO filed a Preliminary Objection seeking to dismiss the Present Complaint because: 1) the Commission does not have jurisdiction over the Commonwealth Court of Pennsylvania; and 2) the Present Complaint is legally insufficient as it fails to set forth a violation by PECO of either the Public Utility Code, the regulations of the Commission or PECO's Electric Service Tariff as required by 52 Pa. Code § 5.22(a)(4).

On September 22, 2025, Mr. DiBello filed his Answer to PECO's Preliminary Objection.

On September 23, 2025, Mr. DiBello filed an Amended Answer to PECO's Preliminary Objection challenging PECO's claims that the Commission lacks jurisdiction to issue a stay over an appeal outside of its jurisdiction, and that the Present Complaint is legally insufficient.

On September 25, 2025, the Commission entered an Opinion and Order (*September 2025 Order*) in the First 2025 Complaint. In its Opinion and Order, the Commission denied the Exceptions filed by Mr. DiBello, rejected his Petition for a Stay, dismissed the First 2025 Complaint, and adopted the Initial Decision of ALJ Brady issued on June 12, 2025, as modified.

On September 30, 2025, Mr. DiBello filed his Reply to PECO's New Matter, admitting in part and denying in part the material averments of the New Matter without referring to the Commission's Opinion and Order entered on September 25, 2025, on his First 2025 Complaint.

By Motion Judge Assignment Notice dated October 10, 2025, PECO's Preliminary Objection was assigned to me for disposition.

The Preliminary Objection is ready for disposition.

FINDINGS OF FACT

1. The Complainant is Jonathan DiBello, who receives electric service from PECO at 813 Lafayette Ave., 1st Rear, Prospect Park, PA 19076 (Service Address).
2. The Respondent is PECO Energy Company.
3. On September 22, 2022, the Complainant filed a Chapter 13 Bankruptcy Petition in the Eastern District of Pennsylvania under Case No. 22-12547. Present Complaint New Matter ¶ 1; Present Complaint Answer to New Matter ¶ 1.
4. As of the date of this Initial Decision, Mr. DiBello's Chapter 13 Bankruptcy Petition is active and pending. Present Complaint New Matter ¶ 2; Present Complaint Answer to New Matter ¶ 2.
5. In 2023, Mr. DiBello filed a formal Complaint against PECO, at Docket No. C-2023-3041825, requesting a payment arrangement. *See* Present Complaint New Matter ¶ 5; Present Complaint Answer to New Matter ¶ 5.
6. By Opinion and Order entered on December 7, 2023, the Commission denied Complainant's Exceptions and dismissed his 2023 Complaint. Present Complaint New Matter ¶ 5; Present Complaint Answer to New Matter ¶ 5.
7. Mr. DiBello filed an appeal to the Commission's *December 2023 Order* with the Commonwealth Court of Pennsylvania, at Docket No. 159-CD-2024. *See* Present Complaint ¶ 5; Answer to Present Complaint ¶ 4.

8. On April 7, 2025, Mr. DiBello filed a Formal Complaint against PECO at Docket No. C-2025-3054440, alleging that PECO was threatening to shut off his service and requesting a stay of termination proceedings until his appeal of the Commission's *December 2023 Order* was adjudicated by the Commonwealth Court. Present Complaint New Matter ¶ 7; Present Complaint Reply to New Matter ¶ 7.

9. On July 28, 2025, Mr. DiBello received another of a Ten-Day Shut Off Notice from PECO. See Present Complaint ¶ 4; Present Complaint Answer ¶ 4.

10. On August 7, 2025, Mr. DiBello filed the Present Complaint against PECO at Docket No. C-2025-3056972, alleging that the utility is threatening to shut off his service although the Commission has not made a final determination on his First 2025 Complaint against PECO and while his appeal of the Commission's *December 2023 Order* is pending before the Commonwealth Court. Present Complaint ¶¶ 4-5.

11. On September 25, 2025, the Commission entered an Opinion and Order in Mr. DiBello's First 2025 Complaint against PECO at Docket No. C-2025-3054440.

12. In its Opinion and Order entered on September 25, 2025, on the First 2025 Complaint, the Commission denied the Exceptions filed by Mr. DiBello, rejected his Petition for a Stay and dismissed the First 2025 Complaint.

13. The Complainant has not made a payment on his account with PECO since July 2023 and has accumulated an outstanding balance of \$5,345.28. Present Complaint New Matter ¶ 12; Present Complaint Reply to New Matter ¶ 12.

DISCUSSION

Commission regulations permit the filing of preliminary objections. 52 Pa.Code §§ 5.101(a)(1)-(7). Preliminary objection practice before the Commission is similar to Pennsylvania civil practice respecting preliminary objections. *Equitable Small Transp. Intervenors v. Equitable Gas Co*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

Commission regulation regarding preliminary objections provides in pertinent part:

§ 5.101. Preliminary objections.

(a) *Grounds.* Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, 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).

In deciding preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the complainant, recovery or relief is possible. *Dep't of Auditor General, et al v. SERS, et al.*, 836 A.2d 1053, 1064 (Pa.Cmwlth. 2003); *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. *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 Employees' Retirement Bd.*, 690 A.2d 1312 (Pa. Cmwlth. 1997).

A preliminary objection can be granted only if recovery or relief is not possible after all of the Complainant's averments in the complaint are viewed as true for purposes of deciding the preliminary objection, using only those facts specifically admitted.

a) Stay of termination proceedings pending the Commission's final determination on the *First 2025 Complaint*

In the Present Complaint, Mr. DiBello seeks to stay termination proceedings initiated by PECO following the Commission's *December 2023 Order*, on his 2023 Complaint against PECO. According to Mr. DiBello, the termination proceedings should be stayed until the Commission reaches a final determination on his First 2025 Complaint against PECO, which was pending as of the date of the filing of the Present Complaint. However, on September 25, 2025, the Commission entered an

Opinion and Order in the First 2025 Complaint. In its Opinion and Order, the Commission first used its discretion, pursuant to 52 Pa. Code § 1.2, to consider Mr. DiBello's request for disposition in the First 2025 Complaint as a Petition to Stay PECO from termination of service based upon the Commission's *December 2023 Order*. Then, the Commission denied the Exceptions filed by Mr. DiBello, rejected his Petition for a Stay, and dismissed the First 2025 Complaint. Therefore, the relief requested by Mr. DiBello in the Present Complaint is now moot.

b) Stay of termination proceedings pending the resolution of Mr. DiBello's appeal of Commission's *December 2023 Order* to the Commonwealth Court

Mr. DiBello also seeks to stay termination proceedings pending the resolution of his appeal of the Commission's *December 2023 Order* in front of the Commonwealth Court. This claim and request constituted the entirety of Mr. DiBello's First 2025 Complaint. In its Opinion and Order entered September 25, 2025, the Commission exercised its discretion pursuant to 52 Pa. Code § 1.2 to consider Mr. DiBello's request for disposition in the First 2025 Complaint as a Petition to Stay PECO from termination of service based upon the Commission's *December 2023 Order*. *September 2025 Order* at 13-15. Ruling on Mr. DiBello's Request for a Stay, the Commission utilized the four-part test outlined in *Pa. Pub. Util. Comm'n v. Process Gas Consumers Group*, 467 A.2d 805 (Pa. 1983) (*Process Gas*). According to *Process Gas*, to prevail on a request for a stay, the petitioning party must show: (1) a strong likelihood of prevailing on the merits; (2) that denial of relief will cause irreparable injury; (3) that issuance of a stay will not substantially harm other parties to the proceeding; and (4) that issuance of a stay will not adversely impact the public interest. *September 2025 Order* at 16.

Noting that Mr. DiBello's First 2025 Complaint was devoid of any citations to Pennsylvania law supporting his position that he was entitled to a stay, or of any facts

other than those alleged in the 2023 Complaint, the Commission found no substantial evidence supporting a finding of a strong likelihood that Mr. DiBello would prevail on the merits of his appeal. *Id.* at 17. In fact, analyzing the record of Mr. DiBello’s First 2025 Complaint, the Commission concluded that through his request for a Stay, Mr. DiBello was asking the Commission to “indulge in a further review of the case.” *Id.*

With respect to the second and third criteria of *Process Gas*, the Commission found that Mr. DiBello had submitted no evidence, within the record, of the harm he will suffer if a stay is not granted, or that a stay or supersedeas will not substantially harm PECO. On consideration of the fourth criterion of *Process Gas*, the Commission found that Mr. DiBello failed to demonstrate that the issuance of a stay will not adversely affect the public interest. Indeed, the Commission was compelled to remind Mr. DiBello that,

[A] public utility is entitled to full payment for service provided to customers, and there is an obligation for all customers to pay for the utility service provided to them. Otherwise, unpaid customer bills are included in the utility’s uncollectibles expense and, ultimately, paid for by the other remaining utility customers. *Mill v. Pa. PUC*, 447 A.2d (Pa. Cmwlth. 1982); *Scaccia v. West Penn Power Co.*, 55 Pa. PUC 637 (1982). The Commission has noted with approval the reasoning of prior decisions concluding that the “Commission has historically defined the public interest as including ratepayers, shareholders, and the regulated community.” *Application of CMV Sewage Company, Inc.*, Docket No. A-230056F2002 (Opinion and Order entered December 23, 2008).

September 2025 Order at 18.

Because Mr. DiBello failed to meet the standards for issuance of a stay, as outlined in *Process Gas*, the Commission denied his Exceptions, declined to issue a stay of its December 2023 Order, and dismissed Mr. DiBello’s First 2025 Complaint. The

same disposition is warranted in the Present Complaint where Mr. DiBello seeks anew to stay termination proceedings pending the resolution of his appeal of the Commission's ruling in his 2023 Complaint in front of the Commonwealth Court. I note that the record of the Present Complaint is even more bare of legal citations or factual averments to support his position and request for a stay of termination than the record of the First 2025 Complaint.

More importantly, following the Commission's September 25, 2025 Opinion and Order in Mr. DiBello's First 2025 Complaint, his claim that PECO's termination proceedings should be stayed pending the resolution of his appeal of the *December 2023 Order* in the Commonwealth Court is precluded by the provisions of 66 Pa.C.S. § 316, as well as the legal doctrines of *res judicata* and collateral estoppel. Section 316¹ precludes a collateral attack upon a Commission order which has not been reversed upon appeal. *See Lehigh Valley Power Comm. v. Pa. Pub. Util. Comm'n*, 563 A.2d 548 (Pa. Cmwlth. 1989) (citing 66 Pa.C.S. § 316). Because Section 316 of the Public Utility Code prohibits a complaint from raising issues that were previously decided, Mr. DiBello's request for a stay of the termination proceedings pending the adjudication of his appeal by the Commonwealth court will be dismissed as it was previously decided in the First 2025 Complaint.

Res judicata, or claim preclusion, prevents a future suit between the same parties on the same cause of action after a final judgment is entered on the merits of the action. *See PMA Ins. Grp. v. Workmen's Comp. Appeal Bd. (Kelley)*, 665 A.2d 538 (Pa.

¹ Section 316 of the Public Utility 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.

Cmwlth. 1995). *Res judicata* “prohibits parties involved in a prior litigation from subsequently asserting claims in a later action that were raised, or could have been raised, in the previous adjudication.” *Hillgartner v. Port Auth.*, 936 A.2d 131, 141 (Pa. Cmwlth. 2007) (quoting *Montella v. Berkheimer Assocs.*, 690 A.2d 802 (Pa. Cmwlth. 1997)).

Res judicata also “shields parties from the burden of re-litigating claims with the same parties, or parties in privity with the original litigant, and serves to protect the courts from inefficiency and confusion that re-litigation fosters.” *Id.* at 141.

For the doctrine of *res judicata* to apply, a party must demonstrate: (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. *Day v. Volkswagenwerk Aktiengesellschaft*, 464 A.2d 1313, 1316-17 (Pa. Super. 1983). In the *First 2025 Complaint* and the *Present Complaint* (1) the issue is whether PECO can pursue termination of service proceedings while Mr. DiBello’s appeal of the Commission’s *December 2023 Order* is still pending before the Commonwealth Court (2) the cause of action is a formal complaint involving PECO’s termination proceedings (3) the parties are the same (Jonathan DiBello and PECO Energy Company); and (4) the Complainant and Respondent in the *First 2025 Complaint* and the *Present Complaint* are the same and, therefore, have identical quality or capacity. In addition, the Opinion and Order entered on September 25, 2025, at Docket No. C-2025-3054440, constitutes a final judgment entered on the merits of the action. Consequently, Mr. DiBello’s claim concerning the stay of termination proceedings is barred by *res judicata*.

Collateral estoppel, or issue preclusion, prevents re-litigation of an issue of fact or law between the same parties upon a different claim or demand. *See Fiore v. Commonwealth*, 508 A.2d 371 (Pa. Cmwlth. 1986). The doctrine of collateral estoppel, or issue preclusion, applies where: (1) “[a]n issue decided in a prior action is identical to the one presented in a later action”; (2) “[t]he prior action resulted in a final judgment on

the merits”; (3) “[t]he party against whom collateral estoppel is asserted was a party to the prior action, or is in privity with a party to the prior action”; and (4) “[t]he party against whom collateral estoppel is asserted had a full and fair opportunity to litigate the issue in the prior action.” *Rue v. K-Mart Corp.*, 713 A.2d 82, 84 (Pa. 1998).

In the First 2025 Complaint like in the Present Complaint: (1) the issue was the lawfulness of PECO’s initiation of termination proceedings while the appeal of the Commission’s *December 2023 Order* is pending before the Commonwealth Court; (2) the First 2025 Complaint was adjudicated on the merits; (3) the parties in the prior action are the same (Jonathan DiBello and PECO Energy Company); and (4) in the prior action, the Complainant had a full and fair opportunity to raise claims and litigate issues regarding PECO’s termination proceeding. Thus, collateral estoppel bars Mr. DiBello from asserting anew the issue of PECO’s termination proceedings.

In view of the above, the Preliminary Objection of PECO Energy Company will be sustained and the Present Complaint of Mr. DiBello against PECO will be dismissed in its entirety.

CONCLUSIONS OF LAW

1. A preliminary objection seeking dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt. *Interstate Traveller Servs., Inc. v. Pa. Dep’t of Env’t Res.*, 406 A.2d 1020 (Pa. 1979).

2. To prevail on a request for a stay, the petitioning party must show: (1) a strong likelihood of prevailing on the merits; (2) that denial of relief will cause irreparable injury; (3) that issuance of a stay will not substantially harm other parties to the proceeding; and (4) that issuance of a stay will not adversely impact the public

interest. *Pa. Pub. Util. Comm'n v. Process Gas Consumers Group*, 467 A.2d 805 (Pa. 1983).

3. Under Section 316 of the Public Utility Code, a complainant is prohibited from raising issues that were previously decided. 66 Pa.C.S. § 316.

4. Section 316 precludes a collateral attack upon a Commission order which has not been reversed upon appeal. 66 Pa.C.S. § 316; *see Lehigh Valley Power Comm. v. Pa. Pub. Util. Comm'n*, 563 A.2d 548 (Pa. Cmwlth. 1989).

5. *Res judicata*, or claim preclusion, prevents a future suit between the same parties on the same cause of action after a final judgment is entered on the merits of the action. *See PMA Ins. Grp. v. Workmen's Comp. Appeal Bd. (Kelley)*, 665 A.2d 538 (Pa. Cmwlth. 1995).

6. *Res judicata* prohibits parties involved in a prior litigation from subsequently asserting claims in a later action that were raised, or could have been raised, in the previous adjudication. *Hillgartner v. Port Auth.*, 936 A.2d 131 (Pa. Cmwlth. 2007).

7. *Res judicata* shields parties from the burden of re-litigating claims with the same parties, or parties in privity with the original litigant, and serves to protect the courts from inefficiency and confusion that re-litigation fosters. *Hillgartner v. Port Auth.*, 936 A.2d 131 (Pa. Cmwlth. 2007).

8. For the doctrine of *res judicata* to apply, a party must demonstrate: (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. *Day v. Volkswagenwerk Aktiengesellschaft*, 464 A.2d 1313 (Pa. Super. 1983).

9. Collateral estoppel, or issue preclusion, prevents re-litigation of an issue of fact or law between the same parties upon a different claim or demand. *Fiore v. Commonwealth*, 508 A.2d 371 (Pa. Cmwlth. 1986).

10. The doctrine of collateral estoppel, or issue preclusion, applies where: (1) “[a]n issue decided in a prior action is identical to the one presented in a later action”; (2) “[t]he prior action resulted in a final judgment on the merits”; (3) “[t]he party against whom collateral estoppel is asserted was a party to the prior action, or is in privity with a party to the prior action”; and (4) “[t]he party against whom collateral estoppel is asserted had a full and fair opportunity to litigate the issue in the prior action.” *Rue v. K-Mart Corp.*, 713 A.2d 82, 84 (Pa. 1998).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection of PECO Energy Company is sustained.

2. That the Formal Complaint of Jonathan DiBello, in *Jonathan DiBello v. PECO Energy Company*, at Docket No. C-2025-3056972, is dismissed.

3. That Docket No. C-2025-3056972 be marked closed.

Date: November 18, 2025

_____/s/
Eranda Vero
Administrative Law Judge