**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Albert Buoncristiano :

 :

 v. : C-2015-2466853

 :

Philadelphia Gas Works :

**INITIAL DECISION**

Before

Angela T. Jones

Administrative Law Judge

INTRODUCTION

The Complainant filed a formal complaint against Philadelphia Gas Works (PGW or Respondent or Company) requesting an accounting of the amount owed, if any, due to alleged incorrect charges billed for gas service. This decision dismisses the formal complaint because the customer previously filed a formal complaint with the Pennsylvania Public Utility Commission (Commission or PUC) raising these same issues and the Commission issued an Order denying the requested relief.

HISTORY OF THE PROCEEDING

On January 16, 2015, Edward M. Zawrotny, Esquire, counsel for Albert Buoncristiano (Complainant), filed a formal complaint (Complaint II) with the Commission against the Respondent. Complaint II alleged incorrect charges billed at the property at 3180 Grant Avenue, Philadelphia, Pennsylvania 19114 (service address) based on the Respondent discovering the wrong meter at the service address in 2003. The Complainant also alleged a municipal lien is attached to the service address for which the Complainant desires an accounting to determine the amount owed.

The Respondent filed an Answer with New Matter and a Notice to Plead on March 4, 2015. The Respondent’s Answer denied that all bills are paid in full at the service address. The Respondent admitted that on October 5, 2001, it billed the Complainant in the amount of $34,888.06 due to the fact that the Complainant was previously billed for usage on a 4 dial meter when the appropriate meter was a 6 dial meter. The Respondent averred that the Commission addressed the issue in *Buoncristiano v. Philadelphia Gas Works,* Docket No. F-01061153 (Order entered November 5, 2004), which dismissed the formal complaint (Complaint I) and found the Complainant responsible for the bill.

In New Matter the Respondent stated that the Complainant filed Complaint I on June 17, 2003, which alleged incorrect charges on the gas bill for the service address. The Complainant’s account was discontinued on July 1, 2003. The Commission entered an Order dismissing Complaint I on November 5, 2004 for lack of prosecution. The account balance has remained unpaid. On June 17, 2009, the City of Philadelphia as owner of the Respondent filed a lien at Docket No. 090635017 in the amount of $33,072.14 against the service address. The Respondent alleged that Complaint I and Complaint II present the same subject matter. The Respondent averred that the Complainant is barred from pursuing Complaint II, which was previously addressed by the Commission.

The Respondent further contended that no further charges were assessed after the gas was discontinued in July 2003. The Respondent stated that the prosecution of Complaint II is barred because it was not brought within three years from the date the liability arose pursuant to Section 3314(a) of the Public Utility Code, 66 Pa.C.S. § 3314(a).[[1]](#footnote-1)

The Complainant responded to the New Matter on March 16, 2015. The Complainant averred that he is without knowledge to form a belief that the allegations and facts stated in New Matter are true and requested proof.

By Hearing Notice dated April 3, 2015, the matter was scheduled for Initial Hearing on Tuesday, May 12, 2015, at 10:00 a.m. The matter was assigned to the undersigned Administrative Law Judge (ALJ), Angela T. Jones.

A Prehearing Order was issued on April 7, 2015, advising the parties of the date, day and time of the scheduled hearing, and informing them of the procedures applicable to this proceeding. The Prehearing Order also raised the matter of claim preclusion regarding Complaint I and Complaint II that may be addressed by the parties in written form in this proceeding.

The Initial Hearing convened as scheduled. The Complainant appeared represented by Paul T. Sosnowski, Esquire. Mr. Sosnowski filed a Notice of Appearance on May 19, 2015, pursuant to 52 Pa.Code § 1.24(b)(2).[[2]](#footnote-2) Mr. Laureto Farinas, Esquire, counsel for the Respondent, was present accompanied by one witness. No witness testified because the parties argued the law as to whether the Order from the Commission at Complaint I barred the evidentiary hearing for Complaint II. The parties were directed by Order dated May 13, 2015, to put their positions in written form for review and ruling by the undersigned.

The transcript consists of 30 pages. The parties filed written briefs in June and July 2015 in compliance with the directions provided by the undersigned.

On July 16, 2015, at Docket No. P-2015-2493209 pursuant to 52 Pa.Code § 5.572(d), Complainant’s counsel filed a Petition for Rescission of the Order for Complaint I (Petition). By Order #3 dated July 21, 2015, the undersigned stated that the decision by the Commission of the Petition directly affected the decision of Complaint II. The undersigned held Complaint II in abeyance until a final Order was entered at Docket No. P-2015-2493209.

By Order the Commission denied the Petition filed by the Complainant and ordered, “that [the Commission’s] Order in *Buoncristiano v. Philadelphia Gas Works,* Docket No. F-01061153 (Order entered November 5, 2004), remains final and in effect.” *Buoncristiano v. Philadelphia Gas Works,* Docket No. P-2015-2493209 (Opinion and Order entered January 28, 2016) at 11, ordering ¶ 2.

By corrected Order #4 dated March 8, 2016,[[3]](#footnote-3) the undersigned stated that the condition to hold Complaint II in abeyance had been satisfied, and therefore, Complaint II was no longer in abeyance. The record for Complaint II closed on February 4, 2016 by Order #4. This matter is ripe for decision.

FINDINGS OF FACT

1. The Complainant is Albert Buoncristiano.
2. The Respondent is Philadelphia Gas Works.
3. On January 16, 2015, the Complainant filed Complaint II with the Commission against the Respondent regarding incorrect charges for billed service in 2003 for the property located at 3180 Grant Avenue, Philadelphia, Pennsylvania 19114.
4. The Respondent filed an Answer with New Matter on March 4, 2015.
5. On March 16, 2015, the Complainant responded to New Matter.
6. By Prehearing Order dated April 7, 2015, the matter of claim preclusion was raised by the undersigned ALJ as suggested in New Matter of the Respondent.
7. The Complainant previously filed Complaint I, a formal complaint at Docket No. F-01061153, objecting to the charges billed at 3180 Grant Avenue, Philadelphia, Pennsylvania 19114 where a four dial meter was errantly in place instead of a six dial meter.
8. By Order entered November 5, 2004, the Commission dismissed Complaint I and found that the Complainant was responsible for the final bill of gas service at 3180 Grant Avenue, Philadelphia, Pennsylvania in the amount of $33,072.00.

DISCUSSION

1. Applicable Legal Standard

Administrative agencies such as the Commission are required to provide due process to the parties appearing before them. *Schneider v. Pa. Pub. Util. Comm’n,* 479 A.2d 10 (Pa.Cmwlth. 1984). This due process requirement is satisfied when the parties are afforded notice and an opportunity to be heard. *Id.*

The doctrine of “*res judicata,* which is also known as claim preclusion, holds that a final judgment on the merits by a court of competent jurisdiction will bar any future action on the same cause of action between the parties and their privies.” *Hopewell Estates, Inc. v. Kent,* 646 A.2d 1192, 1194 (Pa.Super. 1994) citing, *McArdle v. Tronetti,* 627 A.2d 1219, 1222 (Pa.Super. 1993). This principle was explained in the case of *Pa. Pub. Util. Comm’n Schuylkill Twp. v. Borough of Phoenixville,* 1993 Pa. PUC LEXIS 78 as follows:

The terms *res judicata* and collateral estoppel have been replaced in recent years in an effort to clarify the difference between the two … The current terms (adopted by the drafters of the Restatement (Second) of Judgments) are claim preclusion and issue preclusion.

**Claim preclusion**, formerly technical or strict *res judicata,* is the term used to describe the effects of merger and bar a prior judgment will have in a later action. Matters which were actually litigated and also matters which should have been litigated in prior actions as part of the same cause of action will not be allowed to be re-litigated in a subsequent action.

**Issue preclusion**, formerly collateral estoppel, prevents the re-litigation of an issue of fact or law which was actually litigated in a prior proceeding and was necessary to the original judgment.

Claim preclusion applies only when all four conditions exist:

(1) identity of the subject matter;

(2) identity of the cause of action;

(3) identity of the parties; and

(4) identity of the quality or capacity (legal status) of the parties suing or being sued.

 Issue preclusion does not require an identity of the parties, but does require:

1. the issue(s) decided by a prior final judgment is identical with the one(s) presented in the later action;
2. the issue(s) was actually litigated;
3. the party against whom issue preclusion is asserted was a party or in privy with a party to the prior litigation; and
4. the determination of the issue(s) was essential to the prior final judgment.

See also, *O’Toole v. Bell Telephone Co. of Pa., Inc.,* 77 Pa.PUC 98, 104 (1992) citing, *Day v. Volkswagenwerk Aktienqesellschaft,* 464 A.2d 1313, 1316-17 (Pa.Super. 1983); *Baker v. Pa. Human Relations Comm’n,* 462 A.2d 881 (Pa.Cmwlth. 1983); and *Jordan v. The United Telephone Co. of Pa.,* 1995 Pa. PUC LEXIS 1558, 22-24 (Initial Decision dated December 22, 1995). A thorough discussion of both doctrines may be found in *Safeguard Mutual Insurance Co. v. Williams,* 463 Pa. 567, 345 A.2d 664 (1975) and *Hebden v. W.C.A.B (Bethenergy Mines, Inc.),* 597 A.2d 182 (Pa.Cmwlth. 1991), app. granted,604 A.2d 251.

The doctrine of *res judicata* is designed to promote certainty, finality and judicial economy. *Canon v. Verizon Pennsylvania Inc.,* Docket No. C-2013-2353818 (Opinion and Order entered March 6, 2014). It reflects the refusal of the law to tolerate the re-litigation of a matter decided by a court or agency of competent jurisdiction so as to curtail waste of the resources of the agency and the Respondent regarding issues that already have been adjudicated. *Id.*

Although the undersigned stated erroneously in the Prehearing Order dated April 7, 2015, that the matter of claim preclusion is raised in this proceeding *sua sponte,* in New Matter of the Respondent it stated, “The Complaint filed at Docket No. F-01061153 involved the same charges and balance owed for gas service that is the subject of the instant proceeding. Thus, the Complainant is barred from pursing (sic) this matter that was dismissed from the Commission…” PGW Answer and New Matter dated March 4, 2015, at 4 ¶ 16. Thus, the Respondent in this proceeding contended that the Complainant’s claim is barred because it was already addressed in a competent jurisdiction. The substantial record evidence is that the Respondent raised the issue of *res judicata*. The undersigned merely highlighted that the issue was to be addressed by the parties.

In addition to the doctrine of *res judicata,* Complaint II may be barred by Section 316 of the Public Utility Code, 66 Pa.C.S. § 316, which states in part,

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.

1. Disposition
2. Incorrect Charges Billed

The parties have had notice and an opportunity to be heard in compliance with the legal standard of due process. An analysis is determinative by comparing the two formal complaints at issue.

1. Complaint I

The ALJ for Complaint I described the complaint as alleging,

‘PGW assessed [me] for gas [I] did not use’; PGW blamed him for the wrong meter in the building when PGW put it in; and, that the gas was not being used for 3½ years for which Complainant received estimated. He wanted the PUC to cut the estimate by 80%.

*Buoncristiano v. Philadelphia Gas Works,* Docket No. F-01061153 (Initial Decision dated August 5, 2004) at 1 (the formal complaint was dismissed without prejudice because the complainant failed to appear and prosecute the formal complaint). The adjudication was regarding gas service for the property at 3180 Grant Avenue, Philadelphia, Pennsylvania 19114, *Id* at 2, (FOF 1).

The Commission has held that where a prior complaint was dismissed because the complainant failed to appear and prosecute the formal complaint, *res judicata* does not apply when there is a subsequent complaint filed by the same complaint regarding the same subject matter because there is no adjudication on the merits of the complaint. *Winston v. Philadelphia Gas Works,* Docket No. C-2010-2181504 (Opinion and Order entered April 16, 2012)(*Winston*).

The Respondent in Complaint I filed exceptions to dismiss the formal complaint with prejudice. By Commission Opinion and Order Complaint I was dismissed with prejudice. See *Buoncristiano v. Philadelphia Gas Works,* Docket No. F-01061153 (Order entered November 5, 2004) at 8, ordering paragraph 4. Consequently, Complaint I is distinguished from *Winston* because Complaint I was dismissed with prejudice. Thus, Complaint I is similar to *Sebrell v. Philadelphia Police Dep’t,* 159 F. Appx 371, 2005 U.S. App. LEXIS 27296 (3d Cir. 2005)(Dismissal with prejudice constituted a decision on the merits barring any further action between the parties.).

2. Complaint II

Complaint II indicated that there were incorrect charges on the Complainant’s 2003 bill and further explains, “All of my bills are paid in full for 19 years. In 2003 PGW said I had the wrong meter in my property and charge me $31,000.00. The name was Albert’s Restaurant Inc. We don’t know anything about meters and after they changed…” Complaint II at 2, ¶ 4. Complaint II is regarding gas service at 3180 Grant Avenue, Philadelphia, Pennsylvania 19114. The Complainant’s requested relief asks, in part, “…the matter be reviewed to determine the exact amount of money that should be owed due to my failure to pay my PGW bill.” Complaint II at 3, ¶ 5. The Complainant also provided information about mechanics and municipal claims:

1. CP June 2009 #35017 $33,072.14, June 17, 2009 gas service; and
2. CP June 2009 #35170 $33,072.14 June 19, 2009 gas service.

 3. Analysis

For the doctrine of *res judicata* to prevail 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 Aktienqesellschaft,* 474 A.2d 1313, 1316-17 (Pa.Super. 1983).

Both complaints dispute the accuracy of the amount billed for service in 2003 for the property located at 3180 Grant Avenue, Philadelphia, Pennsylvania 19114 and both complaints request a determination by the Commission for the amount owed for gas service. The cause of action in both complaints is whether the Respondent, PGW, violated Commission regulations through inaccurate and improper billing. Each complaint involved the same Complainant, Albert Buoncristiano, and the same Respondent, PGW, for gas service at the same location, 3180 Grant Avenue, Philadelphia, Pennsylvania 19114. Lastly, the parties involved are acting in the same capacities. The Complainant, Albert Buoncristiano, is the same in both proceedings and PGW is the Respondent, public utility, in both proceedings.

It is concluded that the doctrine of *res judicata*  applies as a bar to litigate Complaint II. The Commission has entered a final Order at *Buoncristiano v. Philadelphia Gas Works,* Docket No. F-01061153 on November 5, 2004. Furthermore, the Commission denied the petition at *Buoncristiano v. Philadelphia Gas Works,* Docket No. P-2015-2493209 (Order entered January 28, 2016) on the specific issue of whether the final Order at docket No. F-01061153 should be rescinded. Therefore the matter is closed and has not been reopened or reversed on appeal. Consequently, pursuant to 66 Pa.C.S. § 316, the Order at Docket No. F-01061153 shall be conclusive for all parties affected. Complaint II is dismissed due to the doctrine of *res judicata*.

1. Amount Owed

Lastly, the undersigned noticed a discrepancy regarding the amount that the Commission adjudicated that the Respondent be billed for gas service rendered to Albert Buoncristiano for the property at 3180 Grant Avenue, Philadelphia, Pennsylvania 19114 and the amounts alleged regarding mechanics and municipal claims for gas service. At *Buoncristiano v. Philadelphia Gas Works,* Docket No. F-01061153 (Order entered November 5, 2004), the Commission ordered by ordering paragraph 3,

That Albert Buoncristiano shall immediately pay to the Philadelphia Gas Works the final bill in the amount of $33,072.00 associated with the property located at 3180 Grant Avenue, Philadelphia, PA unless Albert Buoncristiano and the Philadelphia Gas Works enter into a payment arrangement.

Consequently, any amount other than $33,072.00 is incorrect for the amount owed by Albert Buoncristiano for the property located at 3180 Grant Avenue, Philadelphia, Pennsylvania 19114 from the adjudication at Complaint I. Stated affirmatively, the Commission has determined that Albert Buoncristiano owed Philadelphia Gas Works $33,072.00 for gas service until service was discontinued on July 1, 2003 to 3180 Grant Avenue, Philadelphia, Pennsylvania 19114.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. § 701.
2. Due process is satisfied when the parties are afforded notice and an opportunity to be heard. *Schneider v. Pa. Pub. Util. Comm’n,* 479 A.2d 10 (Pa.Cmwlth. 1984).
3. The doctrine of *res judicata* is designed to promote certainty, finality and judicial economy reflecting the refusal of the law to tolerate the re-litigation of a matter decided by a court or agency of competent jurisdiction and to curtail wasting of the resources of the agency and the Respondent regarding issues that already have been adjudicated. *Canon v. Verizon Pennsylvania Inc.,* Docket No. C-2013-2353818 (Order entered March 6, 2014).
4. The doctrine of *res judicata* will bar any future action on the same cause of action between the parties and their privies when a final judgment on the merits by a court of competent jurisdiction has occurred. *Hopewell Estates, Inc. v. Kent,* 646 A.2d 1192, 1194 (Pa.Super. 1994) citing, *McArdle v. Tronetti,* 627 A.2d 1219, 1222 (Pa.Super. 1993).
5. For the doctrine of res judicata to prevail, the following four conditions must be met: the identity of: (1) issues; (2) causes of action; (3) persons and parties of action; and (4) quality and capacity of the parties suing or being sued are the same. *Day v. Volkswagenwerk Aktienqesellschaft,* 474 A.2d 1313, 1316-17 (Pa.Super. 1983).
6. *Buoncristiano v. Philadelphia Gas Works,* Docket No. F-01061153 (Opinion and Order entered November 5, 2004) was a final judgment by the Commission on the merits.
7. 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.
8. The Commission failed to rescind *Buoncristiano v. Philadelphia Gas Works,* Docket No. F-01061153 (Opinion and Order entered November 5, 2004) when petitioned to do so; therefore, the decision at Docket No. F-01061153 is conclusive for all parties affected. 66 Pa.C.S. § 316.
9. The Complainant, Albert Buoncristiano, presented the same claims that were presented in *Buoncristiano v. Philadelphia Gas Works,* Docket No. F-01061153 (Opinion and Order entered November 5, 2004) in the instant proceeding. In comparing the instant formal complaint to that at Docket F-01061153, the doctrine of *res judicata* prevails as resolution to this formal Complaint. *Day v. Volkswagenwerk Aktienqesellschaft,* 474 A.2d 1313, 1316-17 (Pa.Super. 1983).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal Complaint filed by Albert Buoncristiano against Philadelphia Gas Works at Docket No. C-2015-2466853 is dismissed.
2. That the amount owed for gas service, which was discontinued on July 1, 2003 at 3180 Grant Avenue, Philadelphia, Pennsylvania 19114 is $33,072.00.
3. That the Secretary mark this docket closed.

Date: March 9, 2016 /s/

 Angela T. Jones

 Administrative Law Judge

1. 66 Pa.C.S. § 3314(a) states,

General rule.—No action for recovery of any penalties or forfeitures incurred under the provision of this part, and no prosecutions on account of any matter or thing mention in this part, shall be maintained unless brought within three years from the date at which the liability therefore arose, except as otherwise provided in this part. [↑](#footnote-ref-1)
2. 52 Pa.Code § 1.24(b) states,

 (b)  *Attorneys*.

   (1)  *Appearance by initial pleading*. An attorney who signs an initial pleading in a representative capacity shall be considered to have entered an appearance in that proceeding.

   (2)  *Appearance in all other instances*. An attorney shall file with the Secretary a written notice of appearance. [↑](#footnote-ref-2)
3. The original Order #4 was dated February 4, 2016. The original Order had a typo in the docket number of Complaint I which was corrected by the corrected Order. [↑](#footnote-ref-3)