

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

RON MOSLEY)	
4577 Bufort Blvd.)	
Dayton, Ohio 45424)	Case No. 18-1226-EL-CSS
)	
Complainant,)	
v.)	
)	
The Dayton Power and Light Company)	
1065 Woodman Drive)	
Dayton, Ohio 45432)	
)	
Respondent.)	

**MOTION TO DISMISS OF
THE DAYTON POWER AND LIGHT COMPANY**

Pursuant to Ohio Admin. Code § 4901-1-12, The Dayton Power and Light Company moves to dismiss this matter for lack of jurisdiction and failure to state a claim upon which relief can be granted. The reasons for granting this motion are more fully explained in the attached Memorandum in Support.

Respectfully submitted,

/s/ Michael J. Schuler

Michael J. Schuler (0082390)

*Counsel of Record

**THE DAYTON POWER AND
LIGHT COMPANY**

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MEMORANDUM IN SUPPORT

Ron Mosley is a customer that has received electric service from The Dayton Power and Light Company (“DP&L”) at 900 Willow Brooke Ct. in Dayton, Ohio and/or 4561 Bufort Blvd. in Huber Heights Ohio, and/or 4577 Bufort Blvd. in Dayton Ohio. While Mr. Mosley’s Complaint lacks any specific description of his claim, he appears to be raising the same issue of overcharging that he has previously raised in two prior actions before this Commission and other Courts throughout Ohio. DP&L filed an Answer on August 17, 2018, denying all material allegations and further moving to dismiss the Complaint. DP&L files this new Motion to Dismiss to more fully explain why this Commission lacks jurisdiction to hear this complaint and why the Complainant fails to state a claim upon which relief can be granted.

A. The Complaint is Barred by the Doctrines of Res Judicata and Collateral Estoppel.

This appears to be yet another attempt to re-litigate claims that have previously been dismissed by this Commission. The doctrine of *res judicata* (claim preclusion) stands for the proposition that “a valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of a previous action.” *Grava v. Parkman Tshp.*, 73 Ohio St.3d 379 (1995). This bar upon re-litigation applies even to instances in which a party is prepared to present new evidence or new causes of action not presented in the first action, or to seek remedies or forms of relief not sought in the first action.” *American Home Products Corporation v. Roger W. Tracy*, 152 Ohio App. 3d 267 (10th Dist. 2003). Similarly, collateral estoppel (issue preclusion) “prevents the relitigation of an issue that has been ‘actually and necessarily litigated and determined in a prior action...” New Winchester Gardens Ltd. Franklin Cty. Bd. Of Revision, 80 Ohio ST.3d 36 (1997). These concepts have also been applied “where an administrative proceeding is of a judicial nature and where the parties have had an ample opportunity to litigate the issues involved in the

proceeding.” *Superior’s Brand Meats, Inc. v. Lindley*, 62 Ohio St. 2d 133 (1980); *Office of the Consumers’ Counsel v. PUCO*, 16 Ohio St. 3d 9 (1985).

Mr. Mosley first brought a complaint against DP&L in 2011. In that case, Mr. Mosley sought to prove his electric account balance was overstated by challenging his billings starting January 2, 2004. Case No. 11-1494-EL-CSS, Opinion and Order at p. 1 (July 10, 2013). Mr. Mosley was afforded a hearing where he offered testimony related to his billings from 1994 through the time of the hearing in September 2011. *Id.* at p. 3. The Commission, however, found that Mr. Mosely failed to carry his burden of proof and dismissed the complaint accordingly. *Id.* at p. 4. Mr. Mosely brought another complainant against DP&L in 2014 relating alleging “that DP&L, beginning in 1994, overcharged him for electric service, that DP&L has estimated his bills without providing an actual meter reading, that DP&L destroyed and replaced his meter, assessed late fees for timely payments, and endangered the health of his wife by terminating service.” Case No. 14-1191-EL-CSS, Entry at ¶1 (Nov. 20, 2014). In response DP&L filed a motion to dismiss arguing that the claims were barred by the doctrines of res judicata and collateral estoppel because Complainant had raised the same claims in *In re Complaint of Ron Mosley v. The Dayton Power and Light Company*, Case No. 11-1494-EL-CSS. *Id.* at ¶3. The Commission granted DP&L’s motion to dismiss, finding that “Complainant is attempting to re-litigate claims and issues that the Commission has fully adjudicated.” *Id.* at ¶8.

Mr. Mosley has once again brought a Complaint against DP&L for overcharges and late fees in the amount of \$35,000 related to the very same claims previously dismissed by this Commission on two separate occasions. See, Complaint at ¶ 4, p. 3.¹ Complainant’s claims

¹ See also, *Mosley v. Dayton Power and Light*, Second Dist. Case No. 27301, Opinion at ¶ 4 (March 17, 2017) (referencing claims of “double charges”)

relating to his bills, were, have been, and/or could have been litigated in his prior cases. As a result, this matter should be dismissed under the doctrines of *res judicata* and collateral estoppel.

B. The Precedent Upon which the Complainant Relies Merits Dismissal.

To the extent the Complainant relies upon case precedent attached to his Complaint, this should be dismissed for failure to state a claim upon which relief can be granted. The Complainant claims that “the appeals court said the PUCO was to get me my money from DP&L.” *See*, Complaint at ¶ 6. The Court of Appeals for the Second District decision attached to Complainant’s Complaint, however, says quite the opposite. In that decision, the Second District explained that Mr. Mosely brought a complaint before the Court of Common Pleas in Montgomery County alleging that DP&L double-charged the Complainant. Order at ¶¶ 3-4. The trial court granted DP&L’s motion to dismiss on the basis that it lacked subject matter jurisdiction. Citing *Russell v. AT&T Corp.*, the Second District affirmed that decision because “the [public utilities] commission has exclusive jurisdiction over various matters involving public utilities, such as rates and charges, classifications, and service, effectively denying to all Ohio courts (except the Supreme Court) any jurisdiction over such matters.” Order at ¶ 9. Thus, Mr. Mosley misrepresents and misplaces reliance upon the Order from the Second District and his case should be dismissed accordingly.

C. To the Extent Complainant is Seeking Monetary Damages, the Commission is Without Jurisdiction.

Although it does not appear so, to the extent that the Complainant is seeking monetary damages this Commission has no statutory authority to issues damages in this matter. This Commission has consistently held that “we have no statutory authority to award monetary damages although, under Section 4905.61, Revised Code, a court of common pleas may grant damages based upon a finding of inadequate service by the Commission.” *Bennett v. Utility*

Operators Corporation, 05-726-WS-CSS, 2007 Ohio PUC LEXIS 760, (November 20, 2007) (citing *Lahke v. Cincinnati Bell, Inc.*, 1 Ohio App. 3d 114, 439 N.E. 2d 938 (1981)). But Complainant does not allege that he received inadequate service; rather, he alleges that he was billed incorrectly. Therefore, this Commission has no jurisdiction to issue damages, nor to issue a finding of inadequate service upon which a court of common pleas may grant damages.

Respectfully submitted,

/s/ Michael J. Schuler

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Company

(willing to accept electronic service)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been sent via ordinary mail, postage prepaid, this 13th day of February 2019 to the following:

Ron Mosley
4577 Buford Blvd.
Dayton, Ohio 45424

Ron Mosley
900 Willow Brook Ct.
Dayton, Ohio 45424

/s/ Michael J. Schuler

Michael J. Schuler

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2/13/2019 4:52:37 PM

in

Case No(s). 18-1226-EL-CSS

Summary: Motion MOTION TO DISMISS OF THE DAYTON POWER AND LIGHT COMPANY electronically filed by Mrs. Pauline M Olon on behalf of The Dayton Power and Light Company and MOSLEY, RON