

THE PUBLIC UTILITIES COMMISSION OF OHIO

**IN THE MATTER OF THE COMPLAINT OF
RON MOSLEY,**

COMPLAINANT,

v.

CASE NO. 18-1226-EL-CSS

DAYTON POWER AND LIGHT COMPANY,

RESPONDENT.

ENTRY

Entered in the Journal on May 15, 2019

I. SUMMARY

{¶ 1} The Commission dismisses the complaint pursuant to the motion filed by Dayton Power and Light Company.

II. DISCUSSION

{¶ 2} Dayton Power and Light Company (DP&L) is a public utility, pursuant to R.C. 4905.02, and is, therefore, subject to the jurisdiction of this Commission.

{¶ 3} Pursuant to R.C. 4905.26, the Commission has authority to consider written complaints filed against a public utility by any person or corporation regarding any rate, service, regulation, or practice relating to any service furnished by the public utility that is in any respect unjust, unreasonable, insufficient, or unjustly discriminatory.

{¶ 4} On July 30, 2018, Ron Mosley (Complainant) filed a complaint against DP&L. Among general allegations relating to service and unlawful acts, Complainant alleges that DP&L, beginning in 1998, overcharged him for electric service resulting in \$35,000 in charges. For relief, Complainant requests monetary damages.

{¶ 5} On August 17, 2018, DP&L filed its answer to the complaint, denying many of the allegations contained therein. Additionally, DP&L raised several affirmative defenses, including, but not limited to, the following: Complainant fails to set forth reasonable grounds for complaint as required by R.C. 4905.26; Complainant fails to state a claim upon which relief can be granted; Complainant's claims are time-barred; Complaint's claims are barred by the doctrines of *res judicata* and collateral estoppel; the Commission lacks jurisdiction over this matter; and DP&L has complied with all applicable rules, regulations, and orders of the Commission, and its tariffs.

{¶ 6} A prehearing settlement conference was held on September 18, 2018; however, the parties were unable to settle the matter.

{¶ 7} The hearing in this matter was set, and continued, on two separate occasions at the unopposed request of Complainant. The hearing is currently scheduled to commence on June 4, 2019.

{¶ 8} On February 13, 2019, DP&L filed a motion to stay the procedural schedule and a motion to dismiss the complaint. In its memorandum in support, DP&L contends that the complaint is barred by *res judicata*¹ and collateral estoppel² and should be dismissed. DP&L argues that the claims and issues in the instant complaint are the same as those that the Commission adjudicated in *In re Complaint of Ron Mosley v. The Dayton Power and Light Company*, Case No. 11-1494-EL-CSS (*Mosley I*), Opinion and Order (July 10, 2013). DP&L states that, in *Mosley I*, Complainant challenged his billings beginning with January 2, 2004. DP&L asserts that the Commission found that

¹ Res judicata (claim preclusion): "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).

² 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).

Mr. Mosley failed to carry his burden of proof and dismissed the complaint. Additionally, DP&L avers the Commission granted DP&L's motion to dismiss when Mr. Mosley brought another complaint against DP&L in 2014 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. *In re Complaint of Ron Mosley v. The Dayton Power and Light Company*, Case No. 14-1191-EL-CSS (*Mosley II*), Entry (Nov. 20, 2014.) DP&L contends that Mr. Mosley's current complaint against DP&L for overcharges and late fees in the amount of \$35,000 relate to the same claims previously dismissed by the Commission on two separate occasions and these claims have been litigated in his prior cases. In the alternative, DP&L argues the complaint should be dismissed for failure to state a claim upon which relief can be granted. DP&L also contends that Mr. Mosley's argument that the Court of Appeals for the Second District stated that the Commission was to get his money from DP&L is misplaced; rather, DP&L explains that the court merely dismissed the case on the basis that it lacked subject matter jurisdiction. Further, DP&L argues the Commission lacks jurisdiction to the extent Mr. Mosley seeks monetary damages.

{¶ 9} Mr. Mosley failed to file a response to either of DP&L's filed motions.

{¶ 10} The Commission finds that the Complainant is attempting to re-litigate claims and issues that the Commission has fully adjudicated. Complainant alleges that DP&L has overcharged him for electric service since 1998 resulting in charges of \$35,000. The Commission observes that hearings in *Mosley I* were convened on three days: September 22, 2011, February 12, 2013, and November 21, 2013. During the course of the hearing, DP&L supported its billing through witness testimony and a complete accounting of debits and credits to verify the amount owed by Complainant. Complainant, on the other hand, did not challenge DP&L's evidence, nor did he present evidence to support his allegation of inaccurate billing. With this proceeding,

Complainant seeks to challenge DP&L's billing as far back as 1998. The Commission decided past billing and late fee issues in *Mosley I* and *Mosley II*. The Commission agrees with DP&L that res judicata and collateral estoppel bar reconsideration of these issues relating to improper billing.

{¶ 11} While we would generally expect that a motion to dismiss raising these affirmative defenses would be filed prior to two unopposed continuances, the Commission finds no substantive distinction between the instant complaint and the complaint filed in *Mosley I* and *Mosley II*. Moreover, Complainant has had a full and fair opportunity to present the claims that he now seeks to reintroduce. Thus, as argued by DP&L, the complaint should be barred by res judicata and collateral estoppel. Accordingly, DP&L's motion to dismiss should be granted.

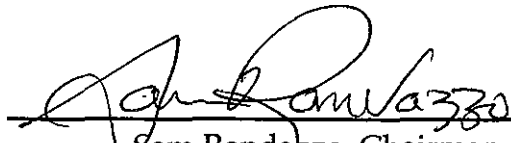
III. ORDER

{¶ 12} It is, therefore,

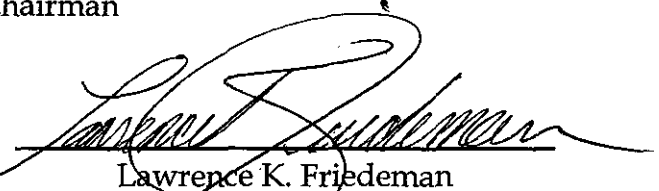
{¶ 13} ORDERED, That this matter be dismissed in accordance with Paragraph 11.
It is, further,

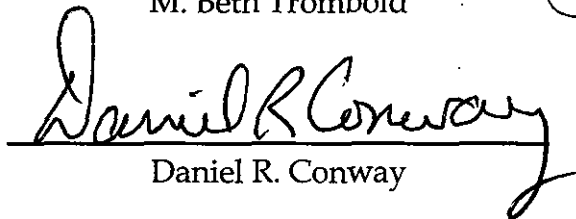
{¶ 14} ORDERED, That a copy of this Entry be served upon all parties of record.

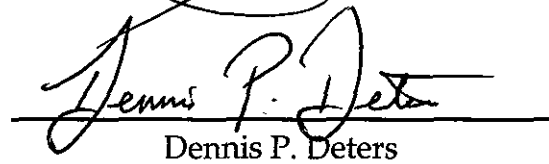
THE PUBLIC UTILITIES COMMISSION OF OHIO


Sam Randazzo, Chairman

M. Beth Trombold


Lawrence K. Friedeman


Daniel R. Conway


Dennis P. Deters

SEC/sc

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Tanowa M. Troupe
Secretary