

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

MARGARET BEAUMONT-CARVER)	
)	
COMPLAINANT)	
)	
V.)	CASE NO.
)	2018-00172
LOUISVILLE GAS AND ELECTRIC COMPANY)	
)	
DEFENDANT)	

ORDER

The matter is before the Commission upon a motion filed by Defendant, Louisville Gas and Electric Company, seeking to dismiss the complaint filed by Complainant, Margaret Beaumont-Carver. The complaint alleges that her service was changed from her name to that of her business in May 2016. The complaint also alleges that the service was unlawfully interrupted for charges to her old account, which was current at the time. The complaint further alleges that Complainant's service was disconnected without warning, that the termination notice was sent after service had been terminated, and that she was charged an additional deposit. Lastly, the complaint alleges that the Defendant unreasonably charged her a total of \$1,578.16 for past-due funds from June 2015 through May 2016, but that she only owed \$716.04 on May 20, 2015. The Complainant thus alleges that she should have had a credit balance of \$862.12¹ and she also requests a

¹ The complaint asserts a credit of balance of \$762.12. However, based upon the allegation of Complainant paying \$1,578.16 in allegedly unreasonable past funds when she only owed \$716.04 on May 20, 2015, the difference between the two figures is \$862.12, which figure was referenced in the complaint at un-numbered page 10.

refund of the \$230 additional deposit that she was required to make.

In its response to the complaint, Defendant argues that Complainant's claims are barred by the doctrine of *res judicata* and moves for the dismissal of the claims. In support of its motion, the Defendant asserts that the Complainant is seeking to re-litigate the claims she had filed against the Defendant in Case No. 2017-00241.² In Case No. 2017-00241, the Complainant alleged that the Defendant improperly refused to honor her request to transfer an electric account—then in the name of the Complainant's business, Studio 550, LLC, which had an outstanding balance—into her personal name so that the Complainant could receive assistance in paying the outstanding debt. The Defendant ultimately satisfied the Complainant's request and transferred the account from Studio 550, LLC, into the Complainant's name and accepted the assistance payment of the full outstanding balance of the Studio 550, LLC, account. Based upon a Notice of Satisfaction executed by both the Complainant and the Defendant indicating that the issues raised in the complaint had been resolved, the Commission issued an Order on August 1, 2017, dismissing the complaint as moot.

The Defendant argues that the instant complaint "relates to the genesis of the charges transferred to [Complainant's] Studio 550, LLC account in May 2016."³ The Defendant maintains that claims in the instant matter relate to the same claims that were raised, settled, and dismissed in Case No. 2017-00241. As such, the Defendant contends that the claims raised in the current complaint are barred by *res judicata*.

² Case No. 2017-00241, Margaret Beaumont-Carver vs. Louisville Gas and Electric Company (Ky. PSC Aug. 1, 2017).

³ Defendant's Motion to Dismiss for Failure to State a Claim Upon Which Relief can be Granted and Answer of Louisville Gas and Electric Company at 2.

In her response to the Defendant's motion to dismiss, the Complainant asserts that, in response to her filing the complaint, Defendant required her to bring her birth certificate, social security information, and marriage license or risk service being discontinued. Complainant also claims that she was charged two deposits on the same account and that service was suspended to her business account, which did not have a past-due balance at the time. Lastly, the Complainant avers that the Defendant removed a bill from bankruptcy protection and charged this amount back to her account.

Having reviewed the record and being otherwise sufficiently advised, the Commission finds that Kentucky courts have long held that the doctrine of *res judicata* applies to "quasi-judicial acts of public, executive, or administrative officers, and boards acting within their jurisdiction,"⁴ unless there has been a significant change of conditions or circumstances that have occurred between two successive administrative hearings.⁵ The doctrine of *res judicata* encompasses two subparts, claim preclusion and issue preclusion.⁶ "Claim preclusion bars a party from re-litigating a previously adjudicated cause of action," and "issue preclusion bars the parties from re-litigating any issue actually litigated and finally decided in an earlier action."⁷ Claim preclusion requires that there be an identity of the parties, an identity of the causes of action, and a resolution of the action based on the merits.⁸ Issue preclusion, also known as collateral estoppel, bars the parties

⁴ *Williamson v. Public Service Commission*, 174 S.W.2d 526, 529 (Ky. 1943).

⁵ *Bank of Shelbyville v. Peoples Bank of Bagdad*, 551 S.W.2d 234, 236 (Ky. 1977).

⁶ *Yeoman v. Commonwealth*, 983 S.W.2d 459, 464 (Ky. 1998).

⁷ *Id.* at 465.

⁸ *Newman v. Newman*, 451 S.W.2d 417, 419 (Ky. 1970).

from re-litigating any issue actually litigated and finally decided in an earlier action. The following elements are necessary for issue preclusion to operate as a bar to further litigation: “First, the issue in the second case must be the same as the issue in the first case. Second, the issue must have been actually litigated. Third, even if an issue was actually litigated in a prior action, issue preclusion will not bar subsequent litigation unless the issue was actually decided in that action. Fourth, for issue preclusion to operate as a bar, the decision on the issue in the prior action must have been necessary to the court’s judgment.”⁹

Applying the respective standards of claim preclusion and issue preclusion to the facts of this matter, the Commission finds that the Defendant has failed to establish that the complaint is barred under the doctrine of *res judicata*. We note that the basis of the Defendant’s claim of *res judicata* is that the complaint at bar and the claim in Case No. 2017-00241 arise from an identical set of facts, namely, the Complainant’s request to transfer the service of her business to her personal account in order for her to receive certain payment assistance towards her business account. However, the similarities between the claim in Case No. 2017-00241 and the claims raised in the instant complaint are different. The only claim made in Case No. 2017-00241 involves the Complainant’s request to be able to transfer the outstanding balance of her business account to her personal account in order to receive and apply assistance payments towards the outstanding balance of her business account. Case No. 2017-00241 was resolved based upon a notice of satisfaction of the claim by the Defendant. In the instant matter, Complainant’s billing claims all relate to her personal account, and not her business

⁹ *Yeoman*, 983 S.W.2d 459, 465.

account, for the billing period between May 20, 2015, and May 6, 2016. In light of the differing nature of the claims and issues presented by Complainant in this matter, the Commission will decline to apply the doctrine of *res judicata* to bar the complaint.

IT IS THEREFORE ORDERED that:

1. The Defendant's motion to dismiss is denied.
2. The procedural schedule attached as an Appendix to this Order shall be followed.

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By the Commission

ENTERED
MAY 10 2019
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

Case No. 2018-00172

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2018-00172 DATED **MAY 10 2019**

Initial requests for information upon each party
shall be filed no later than..... 05/24/19

Each party shall file responses to initial requests
for information no later than..... 06/07/19

Supplemental requests for information upon each party
shall be filed no later than..... 06/21/19

LG&E shall file responses to supplemental requests
for information no later than..... 07/08/19

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