

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2019-331-E - ORDER NO. 2020-519

AUGUST 7, 2020

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| IN RE: Enrique McMilion, Jr., |) | ORDER DENYING |
| Complainant/Petitioner v. Duke Energy |) | PETITION FOR |
| Carolinas, LLC, Defendant/Respondent |) | REHEARING |

This matter comes before the Public Service Commission of South Carolina (“the Commission”) on a document requesting rehearing in this Complaint matter, filed by the Complainant, Enrique McMilion Jr., (“Mr. McMilion” or “Complainant”). The Complainant has filed what he denominates as a “Motion for Rehearing” of Commission Order No. 2020-342, which granted Duke Energy Carolinas, LLC’s (“DEC’s”) Motion to Dismiss Mr. McMilion’s Complaint in this Docket.

First, whether Mr. McMilion’s document is deemed to be a “Motion” or a “Petition,” the document must meet certain regulatory specifications. An examination of Mr. McMilion’s document reveals that his document fails to comply with S.C. Code Ann. Regs. 103-825 (A) (4). This regulation requires that requests for rehearing set forth “clearly and concisely:” (a) The factual and legal issues forming the basis for the petition; (b) The alleged error or errors in the Commission order; and (c) The statutory provision or other authority upon which the petition is based. Mr. McMilion’s document fails to set forth “clearly and concisely” how the Commission erred in Order No. 2020-342, but, instead, rehashes matters that were argued in his more than two dozen filings in three Dockets: Docket Nos. 2018-379-E, 2019-230-E, and 2019-331-E. Accordingly, the request for rehearing is not properly before the Commission.

However, even if Mr. McMilion’s document is deemed to be properly before the Commission, there are no matters discussed in it that have not already been ruled on in other cases. Mr. McMilion’s Complaint centers around his opposition to the installation of a “smart meter” by DEC on his premises, and his disinclination to pay the fees required under Rider MRM in order to opt for a manually read meter. *See e.g.* Commission Order No. 2020-342. The Motion continues to assert his argument that the placement of such meters is a matter of contract between DEC and himself. As stated in Commission Order No. 2020-342, the terms and conditions under which a utility provides service are governed by its tariff and service regulations, not by contracts between the utility and individual customers. Service regulations and tariff provisions approved by the Public Service Commission have the force and effect of law and are binding on utility customers, regardless of whether an individual customer agreed to them. *See, e.g., Carroway v. Carolina Power & Light Co.*, 226 S.C. 237, 84 S.E. 2d 728 (1954). Mr. McMilion states that the “bedrock” of his Complaint is his right to be informed. DEC’s tariff and service regulations regarding smart meters and Rider MRM are public documents, available for viewing by the public.

Further, Mr. McMillion’s assertions of bias against the Commissioners in this case remain unsupported. The Complainant has presented no evidence of personal bias or animus on the part of any Commissioner. The reasoning for our conclusion denying Mr. McMillion’s Motion for Recusal in Order No. 2020-342 is unchanged and we reaffirm it here.

Mr. McMillion’s request for rehearing must be denied because of the simple fact that the same facts and circumstances have been presented and adjudicated adversely to Mr. McMilion in three separate Commission Dockets: Docket Nos. 2018-379-E, 2019-230-E and 2019-331-E. As we held in Order No. 2020-342, the legal doctrine of *res judicata* bars subsequent litigation between identical parties where the claims arise out of the same transaction or occurrence that

was the subject of the prior litigation between those same parties. The doctrine bars litigants from raising any issues which were adjudicated in the prior action as well as any issues which might have been raised in the prior action. The Complaint in the present Docket is the third complaint raised by the same individual, against the same utility, arising from the same transaction or occurrence. We held in Order No. 2020-342 that the doctrine of *res judicata* applies, and Mr. McMilion's request for rehearing has not convinced us otherwise. It is clearly time for this litigation to end. Accordingly, Mr. McMillion's request for rehearing is denied. We reaffirm the provisions of Order No. 2020-342, and the dismissal of Mr. McMilion's Complaint for the third time.

This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:

Comer H Randall

Comer H. "Randy" Randall, Acting Chairman

(SEAL)



