

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Stonehurst Realty Corp.	:	
	:	
v.	:	Docket No. C-2010-2181922
	:	Docket No. C-2010-2182009
PECO Energy Company	:	

**AMENDED PETITION OF STONEHURST REALTY CORP., COMPLAINANT,
FOR PERMISSION FOR LEAVE TO WITHDRAW COMPLAINANT'S
FORMAL COMPLAINTS, WITH PREJUDICE**

Complainant, Stonehurst Realty Corp. ("Stonehurst" or "Complainant"), pursuant to the January 13, 2012 Order of Administrative Law Judge Christopher Pell at the January 13, 2012 hearing on this matter, hereby files this Amended Petition of Complainant for Permission for Leave to Withdraw Complainant's Formal Complaints, with Prejudice ("Amended Petition").

1. Complainant filed formal complaints with the Pennsylvania Utility Commission, which have Docket Nos. C-2010-2181922 and C-2010-2182009, respectively (collectively, the "Complaints").
2. At the time of filing the Complaints, the Complainant was not represented by legal counsel.
3. Through the Complaints, Complainant contested the withholding of security deposits by PECO Energy Company, which is the respondent in this matter ("Respondent" or "PECO").
4. After filing the Complaints, the Complainant retained legal counsel to review the legal and other issues in this matter.

5. Complainant requested that its legal counsel pursue an amicable resolution of this matter.

6. Legal counsel, Francine Thornton Boone, Esq., contacted Tishekia Williams, Esq., personally or through her assistant, both with Phillip Pulley, a principal in the Complainant-company, and without Mr. Pulley's presence to discuss an amicable resolution of this matter.

7. Amicable resolutions of legal matters are often recommended and encouraged by the judiciary and by bar associations and other legal and trial lawyer associations.

8. On December 16, 2011, Ms. Boone and Mr. Pulley engaged in a conference call with Ms. Williams at 1 p.m. regarding an amicable resolution of this matter. During this telephone call, Complainant through its principal and counsel discussed several issues in this matter and presented a proposal for an amicable resolution, which Ms. Williams agreed to discuss with her client, the Respondent.

9. By January 2, 2012, the Respondent had not provided a response to the December 16, 2011 settlement offer. Thereafter, Ms. Boone contacted Ms. Williams's office and left a message. Ms. Boone contacted Ms. Williams again and finally spoke with her on January 10, 2012.

10. On January 10, 2012, Ms. Williams stated that the Respondent rejected the Complainant's offer.

11. On January 10, 2012, the Respondent's response was communicated to Mr. Pulley, as a principal in Complainant-company, and the legal and business alternatives in this matter were discussed.

12. On January 11, 2012, Mr. Pulley requested that legal counsel withdraw the Complaints.

13. Thereafter, on January 11, 2012, Ms. Boone contacted Respondent's counsel and informed her that Complainant decided to withdraw the Complaints, in part to demonstrate to Respondent that Complainant is willing to compromise and cooperate with Respondent, even if it means foregoing the claims in the subject Complaints.

14. On January 12, 2012, Complainant filed a letter request to withdraw the Complaints ("Withdrawal Request").

15. Complainant filed the Withdrawal Request two (2) days after Respondent responded to Complainant's settlement offer and one (1) day after discovering that Respondent might object to the withdrawal of the Complaint.

16. Complainant's timing of the filing of the Withdrawal Request was not an attempt to circumvent the provisions and requirements of the applicable laws and regulations, but a direct and necessary response to Respondent's failure to respond to Complainant's settlement offer until just before the January 13, 2012 hearing.

17. While Respondent may have several very good, decent and honorable reasons for waiting to respond to Complainant's settlement offer, the failure to respond in a more diligent fashion delayed a final determination by the Complainant to withdraw or to proceed in these matters. For example, a decision to reject the offer in December may have led to Complainant pursuing the January 13th hearing, given certain considerations confronting the Complainant in December 2011.

18. On January 12, 2012, Respondent filed its “PECO Energy Company’s Objection to Complainant’s Improper Letter Request for Permission for Leave to Withdraw Complaints” (“Objection”).

19. Section 5.94(a) provides:

“(a) Except as provided in subsection (b), a party desiring to withdraw a pleading in a contested proceeding may file a petition for leave to withdraw the appropriate document with the Commission and serve it upon the other parties. The petition must set forth the reasons for the withdrawal. A party may object to the petition within 20 days of service. After considering the petition, an objection thereto and the public interest, the presiding officer or the Commission will determine whether the withdrawal will be permitted.”

20. In accordance with the provisions of Section 5.94 (a), Complainant hereby:

a. Files a petition, this Amended Petition, for leave to withdraw the Complaints, and will serve the Amended Petition on the Commission and all parties, including Respondent.

b. Sets forth in the Amended Petition, below, and as first briefly stated in the Withdrawal Request, the reasons for the withdrawal of the complaints.

c. Provides notice and a copy of this Amended Petition to Respondent, so that Respondent may object or not, within 20 days of service.

d. Asserts, that based on the applicable case and statutory law, the Commission should grant leave to withdraw these Complaints, with prejudice.

22. “The touchstone for deciding whether or not to grant a request to withdraw a pleading in a contested case is: Does granting the request serve the public interest? 52 Pa. Code Section 5.94 (a).” See Glenside Total Fitness Co., Inc. v. PECO Energy Co., 2004 Pa. PUC LEXIS 22 (C-20030207, January 6, 2004), at page 5.

23. “It would not be in the public interest to force litigation of a case in which the Commission was without power to grant the relief sought by the complainant.” See Glenside, at page 5.

24. In the Glenside case, at page 9, the Commission held that: “...because the Commission is without the power to order the relief sought by the complainant in its Complaint, it would be a waste of time, money, and energy on the part of all concerned to attempt to force complainant to continue pursuing its Complaint. Such waste is clearly not in the public interest. Complainant’s request to withdraw its Complaint must be granted.”

25. The Complainant no longer seeks the relief sought in the Complaints and so the request for relief is void. Any hearing would include Complainant’s statements that it no longer seeks the requested relief. Therefore, it is axiomatic that the Commission is without power to grant the relief sought by the Complainant as Complainant has conceded and will concede its desire to no longer fight PECO’s actions and its desire to withdraw the Complaints and requests.

26. Further, the Complaints would be withdrawn with prejudice, which further nullifies the need for a hearing: PECO refused to grant the requested relief; Complainant no longer seeks the requested relief; and said Complaints cannot be refiled as stated.

27. Accordingly, no benefit to the public occurs from continuing these proceedings, where this private company would withdraw its Complaints, with prejudice.

28. As stated in Glenside, “it would be a waste of time, money, and energy on the part of all concerned to attempt to force complainant to continue pursuing its Complaint...Such waste is clearly not in the public interest.”

29. Respondent has not presented a single case evidencing legal support for continuing these proceedings.

30. The Objection sets forth various inconveniences to PECO from Complainant’s attempts to protest the imposition of security deposits, by filing these Complaints.

31. In Paragraphs 6 and 9 of the Opposition, Respondent sets forth its reaction to Complainant’s filing of the Complaints: the exercise of the statutorily provided right to file a Complaint constitutes “badger[ing]” PECO to take certain actions that PECO has not taken and constitutes forcing Respondent to take time to “prepare for the hearing”.

32. Since PECO never conceded to the requests in the Complaint and Respondent prepared for the hearing in the face of Complainant’s attempt to resolve the matter and Complainant’s request to withdraw the Complaints, Respondent’s “hardships” as alleged in the Objection, if any, are self-created.

33. Complainant alleges that it is a bit disingenuous for PECO to complain about alleged inconveniences from Complainant’s filing of Complaints and then to oppose Complainant’s attempt to satisfy PECO by withdrawing the Complaints.

34. Moreover, Respondent's opposition may actually encourage the Public and other parties in actions involving PECO to pursue and continue litigation, as the option even to withdraw is no longer available.

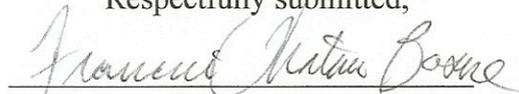
35. Under this paradigm as advanced by the Respondent, much more of the parties' and the Commissions' time, energy, and resources would be wasted in the future on cases that could otherwise end.

36. For the reasons set forth, herein, it is not in the public interest for the proceedings in this case to continue.

37. The parties, the Commission, and the public will all benefit by granting permission to Respondent to withdraw its complaints. To withdraw the Complaints, with Prejudice, prevents the Complainant from refileing the Complaints, which constitutes a final determination. Further, to deny the right to withdraw a complaint under these circumstances, merely encourages the pursuit of litigation that would otherwise end, which benefits no one—and certainly does not benefit the public or the public's interests.

WHEREFORE, Complainant respectfully requests that your Honorable Commission permit Complainant to withdraw the Complaints, with prejudice.

Respectfully submitted,



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General Counsel and Attorney for
SBG Management Services, Inc.
and Stonehurst Realty Corp.

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