

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Domonique Smith	:	
	:	
v.	:	C-2016-2569011
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Tiffany L. Tran
Special Agent

In this initial decision, the Complainant’s request to withdraw his formal complaint is granted since the Respondent did not object to the withdrawal and the withdrawal is in the public interest.

HISTORY OF THE PROCEEDING

On September 29, 2016, Domonique Smith (Complainant) filed a complaint with the Public Utility Commission (Commission) against Philadelphia Gas Works (PGW or Respondent), alleging the following: 1) that the utility is threatening to terminate his service or that his service has already been shut off, and 2) that he would like a payment arrangement. The Complainant alleged that he was unemployed for nearly two years and that when he regained employment he was only earning minimum wage. Attached to the complaint was a copy of a credit denial letter in the Complainant’s name from Philadelphia Gas Works, dated August 31, 2016.

On October 20, 2016, the Respondent filed an answer, in which it admitted that it issued a 10-day shut off on May 23, 2016, and terminated the Complainant’s service on June 14, 2016 for nonpayment. PGW alleged that the Complainant has not made a good faith effort to

pay his bills, and requested that the Commission dismiss the Complaint. Attached to the answer was a copy of a Bureau of Consumer Services (BCS) decision dated August 31, 2016 at Case No. 3472877, which was closed without a decision.

By hearing notice dated October 27, 2016, a hearing was scheduled for December 2, 2016 at 10:00 a.m., and the matter was assigned to the undersigned presiding officer.

The undersigned sent a prehearing order to the parties on October 31, 2016.

On Monday, November 28, Graciela Christlieb, Esquire, counsel for PGW, contacted me by telephone to inform me that she had been in touch with the Complainant in an attempt to reach a settlement and that the Complainant had represented to her that he no longer lived at the service address and therefore was no longer interested in pursuing his complaint. Attorney Christlieb had no objection to the Complainant's decision to not pursue his complaint.

On December 1, 2016, I contacted the Complainant by telephone, and he confirmed that he no longer wished to pursue his complaint. I requested that he mail a letter to the Commission stating his intention to withdraw his complaint in writing. The Complainant stated he would do so.

In light of the withdrawal request, no evidentiary hearing was convened.

As of December 21, 2016, the Complainant had not filed any letter or writing with the Commission setting forth his intent to withdraw his complaint. I therefore contacted the Complainant again by telephone. The Complainant again affirmed that he was no longer pursuing his complaint. I asked if he would consider sending an email confirming that he was no longer pursuing his complaint, and he agreed. I sent the Complainant an email, copying counsel for PGW, to the email address he provided on his formal complaint form (December 21, 2016 email). In my December 21, 2016 email to the Complainant, I asked that he respond stating whether he intended to continue to pursue his complaint. I requested that he respond to my email

by 12:00 noon on December 22, 2016, and noted that if I did not receive a response to my email at that time, then I would presume that he no longer wished to pursue his complaint and issue an initial decision.

The Complainant sent a response to the December 21, 2016 email at 3:45 p.m. on December 22, 2016, affirming that he would like to “drop” his complaint against PGW.

The record closed on December 22, 2016 with the receipt of the Complainant’s response to the December 21, 2016 email.

FINDINGS OF FACT

1. The Complainant is Domonique Smith.
2. The Respondent in this proceeding is Philadelphia Gas Works.
3. On September 29, 2016, the Complainant filed a formal complaint with the Commission against the Respondent.
4. On October 20, 2016, the Respondent filed an answer to the formal complaint.
5. On December 22, 2016, the Complainant sent an email to the presiding officer indicating that he has no desire to pursue his complaint.
6. The Respondent has indicated that it has no objection to the withdrawal of the formal complaint.

DISCUSSION

The Complainant has indicated that he no longer wishes to pursue his formal complaint against the Respondent. The Respondent has indicated that it has no objection to the Complainant withdrawing his complaint.

The relevant regulation is 52 Pa.Code § 5.94, which reads as follows:

§ 5.94. Withdrawal of pleadings in a contested proceeding.

(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 10 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.

In this case, the Complainant sent an email on December 22, 2016 in which he stated he would like to “drop” his complaint against PGW. This email was not sent to counsel for PGW. However, the regulation at 52 Pa. Code §1.2(a) provides that the presiding officer or Commission may disregard an error or defect of procedure which does not affect the substantive rights of the parties.

In my December 21, 2016 email to the Complainant, I instructed as follows:

Please respond by 12:00 noon tomorrow, December 22, 2016, to this email indicating whether you wish to pursue your complaint.

If we do not hear from you by that time, I will presume that you are no longer interested in pursuing your complaint, and will issue an initial decision to that effect.

December 21, 2016 email.

At 3:45 p.m. on December 22, 2016, the Complainant sent the following response to the undersigned:

“Hi I would like to drop or resend [sic] my complaint with the philadelphia gas works sorry for the inconvenience”

The Complainant clearly has no interest in pursuing his complaint. I will therefore treat his response to the December 21, 2016 email as a petition to withdraw his complaint at Docket No. C-2016-2569011. I have included a copy of the Complainant’s response to the December 21, 2016 email as part of the record of this case.

There is no objection to the withdrawal of the formal complaint. The withdrawal will eliminate the need for litigation and save resources that would have been used if the case had been fully litigated. Consequently, the undersigned concluded that withdrawal of the formal complaint is fair, reasonable and in the public interest.

Accordingly, the Complainant’s request to withdraw his formal complaint against Philadelphia Gas Works at Docket No. C-2016-2569011 is granted.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter in this proceeding. 66 Pa.C.S. § 701.
2. That a party can petition to withdraw a pleading in a contested proceeding pursuant to 52 Pa.Code § 5.94.
3. In determining whether to permit withdrawal of the pleading, the presiding officer or Commission must consider the petition, any objections thereto and the public interest. 52 Pa.Code § 5.94.

ORDER

THEREFORE,

IT IS ORDERED:

1. That Domonique Smith's request to withdraw his formal complaint against Philadelphia Gas Works at Docket No. C-2016-2569011 is hereby granted.

2. That this case be marked closed.

Date: December 22, 2016

_____/s/
Tiffany L. Tran
Special Agent