

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Sherry Dixon	:	
	:	
v.	:	F-2016-2554895
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Andrew M. Calvelli
Administrative Law Judge

INTRODUCTION

This Decision approves the request of the Complainant, Sherry Dixon, to withdraw her formal Complaint in this matter.

HISTORY OF THE PROCEEDING

On July 1, 2016, Sherry Dixon (Ms. Dixon or Complainant) filed with the Pennsylvania Public Utility Commission (Commission) a formal Complaint against PECO Energy Company (PECO or the Company), at Docket Number F-2016-2554895. In her Complaint, Ms. Dixon averred that PECO was threatening to shut off her gas service or has already shut off her gas service, she would like a payment agreement and there were incorrect charges on her bill. Ms. Dixon requested a payment agreement and requested that certain charges be removed from her bill, among other things. The Complaint was served by the Commission on July 6, 2016.

On July 11, 2016, PECO filed an Answer in response to Ms. Dixon's Complaint. In its Answer, PECO admitted or denied the various averments Ms. Dixon made in her

Complaint. In particular, PECO admitted that it issued a termination notice to Ms. Dixon and that Ms. Dixon seeks a payment agreement. PECO denied that there are incorrect charges on Ms. Dixon's bill and provided a history of the various Complaints filed by Ms. Dixon and payment agreements she has received.

Also on July 11, 2016, PECO filed a Motion for Summary Judgment.¹ In its Motion, which was accompanied by a notice to plead, PECO again reiterated the history of various Complaints filed by Ms. Dixon and the payment agreements she has received. In addition, PECO averred that the case history shows that Ms. Dixon has been abusing the system to prevent termination of service over the course of years, all the while receiving electric service from PECO and accruing a large outstanding balance. PECO cited case law in support of its position that Ms. Dixon's Complaint should be dismissed and attached various documents in support of its position. A response to the Motion was due no later than August 3, 2016. Ms. Dixon did not file a response to the Motion.

By Motion Judge Assignment Notice dated September 27, 2016, the parties were informed that PECO's Motion for Summary Judgment had been assigned to me for a ruling.

On October 7, 2016, my Order Denying the Motion for Summary Judgment was served upon the parties. On October 24, 2016, this office sent out an Initial Hearing Notice, advising the parties that an initial telephonic hearing was scheduled for Monday, December 5, 2016 at 10:00 AM.

On November 30, 2016, this office received a handwritten fax letter from Ms. Dixon, stating that Ms. Dixon "would like to withdraw my complaint against Peco Energy Company. We came to agreement I no longer want to file the complaint." The letter was signed by Ms. Dixon and included the docket number for this case as well as Ms. Dixon's social security number.

¹ Although the motion was entitled "motion to dismiss," the Commission's regulations do not provide for such a motion. Instead, the pleading was considered as a motion for summary judgment and was treated accordingly.

Also on November 30, 2016, PECO sent a letter to this office, indicating that PECO did not oppose Ms. Dixon's petition to withdraw the Complaint.

Neither Ms. Dixon's letter requesting withdrawal of the Complaint nor PECO's response was filed with the Secretary's Bureau. Accordingly, this office forwarded those documents to the Secretary's Bureau for filing on December 1, 2016. The record was then marked closed in this case as of December 1, 2016.

FINDINGS OF FACT

1. The Complainant is Sherry Dixon.
2. On July 1, 2016, the Complainant filed with the Pennsylvania Public Utility Commission a formal Complaint against PECO Energy Company, at Docket Number F-2016-2554895.
2. PECO Energy Company filed an Answer to the Complaint and a Motion for Summary Judgment.
3. A telephonic hearing was scheduled for December 5, 2016 at 10:00 AM.
4. Prior to the hearing, on November 30, 2016, the Complainant indicated in a handwritten fax letter to the presiding officer that she wished to withdraw her complaint.
5. PECO Energy Company indicated via a letter dated November 30, 2016 that it did not object to the Complainant's request to withdraw the Complaint.

DISCUSSION

The Commission's regulations at 52 Pa. Code §5.94 permit parties to withdraw pleadings in a contested proceeding. The regulation at 52 Pa. Code §5.94(a) allows for the

withdrawal of pleadings by way of a petition for leave to withdraw the pleading. The petition is granted only by permission of the presiding officer or the Commission. The presiding officer or Commission must consider the petition, any objections thereto and the public interest in determining whether to permit withdrawal of the pleading.

Although the Complainant did not file her request to withdraw the Complaint with the Commission, and did not title her letter as a “Petition to Withdraw Complaint,” the Commission’s regulations at 52 Pa. Code §1.2(a) provide that the presiding officer or the Commission may disregard an error or defect of procedure which does not affect the substantive rights of the parties. As such, this office filed the Complainant’s letter with the Commission and treated the letter as the Complainant’s Petition to Withdraw Complaint. This did not adversely affect PECO’s substantive rights, as PECO indicated that it did not object to the Complainant’s request to withdraw the Complaint.

Given the lack of objection to the request to withdraw, I requested that the parties submit a Certificate of Satisfaction, instead of a Petition to Withdraw, as that would have better served the ends of judicial economy. However, given the claimant’s numerous prior complaints, PECO indicated that it was unwilling to sign a Certificate of Satisfaction.

Turning to the Complainant’s Petition to Withdraw Complaint, the Complainant asserted that she did not wish to pursue the Complaint because she and PECO had reached an agreement. PECO indicated that it does not object to the Petition to Withdraw Complaint. The Complaint does not allege facts that would impact the public interest. No public interest would be served by litigating this case under these circumstances. That being the case, there can be no public interest affected by granting the Complainant’s Petition to Withdraw Complaint.

Having reviewed the Petition to Withdraw, PECO’s statement that it has no objections to the Petition, and the public interest, I conclude that the Petition to Withdraw should be granted. Granting the Petition to Withdraw will terminate the litigation, saving the parties costs in terms of the time and money that they would otherwise spend litigating the case. Granting the request to withdraw will not impact the public interest and will conserve administrative hearing resources.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. §701.

2. The Commission's regulations permit parties to withdraw pleadings in a contested proceeding by permission of the presiding officer or Commission. 52 Pa.Code §5.94.

3. In determining whether to permit withdrawal of a pleading, the presiding officer or Commission must consider the petition, any objections thereto and the public interest. 52 Pa.Code §5.94(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Petition to Withdraw Complaint filed by Sherry Dixon on December 1, 2016, requesting leave to withdraw her July 1, 2016 formal Complaint filed against PECO Energy Company, is granted.

2. That the record at Docket No. F-2016-2554895 is marked closed.

Date: January 4, 2017

/s/
Andrew M. Calvelli
Administrative Law Judge