

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tanine Bennett	:	
	:	
v.	:	C-2016-2546542
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Andrew M. Calvelli
Administrative Law Judge

INTRODUCTION

This Decision approves the request of the Complainant, Tanine Bennett, to withdraw her formal Complaint in this matter, as there were no objections to the request and granting the request to withdraw the Complaint is in the public interest.

HISTORY OF THE PROCEEDING

On May 20, 2016, Tanine Bennett (Ms. Bennett or Complainant) filed with the Pennsylvania Public Utility Commission (Commission) a formal Complaint against PECO Energy Company (PECO or Respondent), at Docket Number C-2016-2546542. In her Complaint, Ms. Bennett averred that PECO was threatening to shut off her gas service or has already shut off her gas service and that she would like a payment arrangement. The Complaint was served on PECO by the Commission on May 20, 2016.

On June 2, 2016, PECO filed an Answer with New Matter in response to Ms. Bennett's Complaint. In its Answer, PECO admitted or denied the various averments Ms. Bennett made in her Complaint. In particular, PECO admitted that it issued a termination

notice to Ms. Bennett and that Ms. Bennett was seeking a payment arrangement. PECO denied that Ms. Bennett was entitled to a payment arrangement since her entire balance was composed of customer assistance program (CAP) arrearages, and requested that the Complaint be dismissed.

On September 29, 2016, PECO filed a Motion for Judgment on the Pleadings in this case. In its Motion, which was accompanied by a Notice to Plead, PECO contended that there were no issues of fact to be decided at a hearing. Specifically, PECO contended that Ms. Bennett's failure to reply to PECO's New Matter should be deemed an admission by Ms. Bennett to the facts set forth in the New Matter that the entire past due balance consisted of CAP arrearages which were not subject to Commission-ordered payment arrangements. PECO also contended that there was no factual dispute concerning threatened termination of service, since Ms. Bennett previously testified (in another proceeding before a different Administrative Law Judge) that she was not paying her bills and that she understood that failure to pay her bills gave PECO the right to terminate her service.

A response to the Motion was due by October 24, 2016. 52 Pa.Code § 5.102(b). Ms. Bennett did not file a response to the Motion.

By Motion Judge Assignment Notice dated December 9, 2016 the parties were informed that PECO's Motion had been assigned to me for a ruling. Through my Order served on December 27, 2016, the Motion was denied for various reasons set forth in the Order. Following the denial of the Motion, a Prehearing Order was served on the parties on December 28, 2016, advising that there would be an initial telephonic hearing on February 15, 2017.

The hearing convened as scheduled on February 15, 2017. Ms. Bennett appeared *pro se*, and PECO was represented by Shawane Lee, Esquire. During the hearing, Ms. Bennett advised that she wished to withdraw her Complaint, as the parties had reached an agreement regarding her account during settlement discussions that the parties had prior to the start of the hearing. PECO did not oppose the request to withdraw the Complaint, and Ms. Bennett was advised to follow up that day with an email confirming her request to withdraw her Complaint.

Ms. Bennett did follow up by sending an email to the Presiding Officer on February 15, 2017. Following receipt of the email, the Presiding Officer closed the record in this case as of February 15, 2017, with the record consisting of the transcript of hearing which totaled 11 pages. For the reasons discussed below, the Complainant's verbal on the record Petition to Withdraw Complaint is granted.

FINDINGS OF FACT

1. The Complainant is Tanine Bennett.
2. The Respondent is PECO Energy Company.
3. On May 20, 2016, Ms. Bennett filed with the Pennsylvania Public Utility Commission a formal Complaint against PECO Energy Company, at Docket Number C-2016-2546542.
4. A telephonic hearing was scheduled for February 15, 2017 and the hearing convened as scheduled.
5. During the hearing, Ms. Bennett advised the Presiding Officer that she had reached a settlement in the case, and that she wished to withdraw her Complaint against PECO.
Tr. 4.
6. PECO confirmed that it had reached an agreement with Ms. Bennett and that it had no objection to Ms. Bennett's request to withdraw her Complaint against PECO.
Tr. 5-7.

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.

In this case, the Complainant and Respondent had settlement discussions prior to the hearing and reached an agreement resolving the issues contained in the Complaint. This fact was conveyed to the Presiding Officer at the start of the hearing in this case on February 15, 2016. The Respondent indicated that it did not object to the Complainant's request to withdraw the Complaint. The Complainant was instructed to send an email to the Presiding Officer memorializing the fact that she was requesting to withdraw the Complaint, and that email was sent on February 15, 2016.

Turning to the Complainant's verbal 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 did 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 Petition to Withdraw also 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.

