

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

200 North 8 <sup>th</sup> Street Associates, LLC	:	
	:	
v.	:	C-2015-2490718
	:	
Metropolitan Edison Company	:	

**INITIAL DECISION GRANTING  
PETITION TO WITHDRAW COMPLAINT**

Before  
David A. Salapa  
Administrative Law Judge

**INTRODUCTION**

A customer filed this complaint alleging that its electric utility was threatening to terminate its service and that there were incorrect charges on its bill. This decision grants the customer’s request to withdraw the complaint.

**HISTORY OF THE PROCEEDING**

On June 29, 2015, 200 North 8<sup>th</sup> Street Associates, LLC (Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against Metropolitan Edison Company (Respondent). The complaint generally alleges that the Respondent was threatening to terminate the Complainant’s service and that there were incorrect charges on its bill. The complaint requests that the Commission aid the Complainant in resolving its problems with the Respondent.

On July 22, 2015, the Respondent filed an answer to the complaint. The answer admits that the Respondent provides service to the Complainant at the address shown on the complaint. The answer generally denies the allegations in the complaint.

On April 7, 2017, the Complainant filed a petition to withdraw its complaint. The petition alleges that by withdrawing the complaint, the Complainant will avoid the cost of continued litigation.

On April 17, 2017, the Respondent filed an answer to the Complainant's petition to withdraw. The answer asserts that the complaint should be dismissed with prejudice.

By notice dated June 22, 2017, the Commission notified the parties that it had assigned the case to me as motion judge. The petition to withdraw is ready for decision. For the reasons set forth below, I will grant the petition to withdraw.

#### FINDINGS OF FACT

1. The Complainant in this case is 200 North 8<sup>th</sup> Street Associates, LLC.
2. The Respondent in this case is Metropolitan Edison Company.
3. On June 29, 2015, the Complainant filed a complaint with the Commission against the Respondent.
4. On July 22, 2015, the Respondent filed an answer to the complaint.
5. On April 7, 2017, the Complainant filed a petition to withdraw its complaint.
6. On April 17, 2017, the Respondent filed an answer to the Complainant's petition to withdraw.

## DISCUSSION

The Commission's Rules of Practice and Procedure at 52 Pa.Code § 5.94 permit parties to withdraw pleadings in a contested proceeding. The provision at 52 Pa.Code § 5.94(a) allows withdrawal of pleadings by 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.

Turning first to the Complainant's petition to withdraw its June 29, 2015 complaint, the petition to withdraw states that the Complainant will avoid the cost of continued litigation if it withdraws its complaint. The Commission has no interest in mandating that the Complainant continue litigation where it no longer wishes to pursue its complaint at this time.

Turning next to any objections to the withdrawal of the June 29, 2015 complaint, the Respondent opposes the Complainant petition to withdraw. The Respondent requests that the Commission should order that the complaint be dismissed with prejudice. I will deny the Respondent's request that the Complainant's complaint be dismissed.

Concerning dismissal with prejudice, the Commission, in Salahuddin v. Metropolitan Edison Company, Docket Nos. P-2015-2504703 and F-2015-2463441 (Opinion and Order entered March 17, 2016), explained that, out of concern that a complainant had wasted the Commission's and the respondent's time and resources, it had dismissed pro se complaints, with prejudice, for failure to appear at a hearing. Day v. PECO Energy Company, Docket No. 2010-2181515 (Opinion and Order entered June 10, 2011); Geary v. Verizon Pennsylvania, Inc., Docket No. C-2009-2118625 (Opinion and Order entered September 16, 2010). However, the Commission observed that in other cases it had declined to dismiss complaints, with prejudice, if the complainants made good faith attempts to attend their hearings on time. Then v. Philadelphia Gas Works, Docket No. F-2012-2318264 (Opinion and Order entered June 13, 2013); Wiggins v. PECO Energy Company, Docket No. C-2010-2190335 (Opinion and Order entered October 27, 2011); and Ference v. Equitable Gas Company, Docket No. C-20015840 (Opinion and Order entered February 12, 2002).

In this case, the Complainant did not fail to appear at a hearing. The concern expressed by the Commission in the cases cited above that a complainant had wasted the Commission's and the Respondent's time and resources is missing in this case. Since that concern is missing in this case, there is no basis to dismiss the Complainant's complaint with prejudice.

Concerning withdrawal of pleadings, the Commission, in Kopanycia v PECO Energy Company, Docket No. C-2016-2526619 (Opinion and Order entered March 1, 2017) (Kopanycia), refused to grant the complainant's request to withdraw his complaint where he had filed the request one day before a scheduled hearing and the respondent objected to the request. The Commission explained that the basis for the withdrawal was the complainant's request that the Commission refer the matter to mediation. The Commission reasoned that the complainant was not abandoning his cause of action by withdrawing his complaint but merely attempting to change the manner in which the complaint would be resolved. The Commission stated that under its Rules of Practice and Procedure, a party could not simultaneously ask to withdraw a complaint and ask to continue the action through mediation. The Commission also noted that on at least three occasions, the complainant in Kopanycia had filed complaints that were dismissed for failure to appear at a hearing and prosecute the complaints.

The Commission in Kopanycia concluded that it would not be in the public interest to grant the request to withdraw the complaint where the request was made one day prior to a scheduled hearing, the respondent objected to the withdrawal, the complainant was not abandoning his cause of action and there was evidence that the complainant had abused the Commission's administrative processes. Rather, the Commission affirmed the Administrative Law Judge's initial decision dismissing the complaint with prejudice when the complainant failed to appear at the hearing and prosecute the complaint.

The Commission in Kopanycia distinguished this result from cases where it had permitted the withdrawal of applications. In those cases, the applicant had properly filed the petition to withdraw, was not seeking to continue the action through mediation and there was no evidence of abuse of the Commission's process. Application of Comfort Trans, LLC, Docket

No. A-2016-2549430 (Opinion and Order entered January 6, 2017); Application of Blessed Transportation, LLC, Docket No. A-2015-2549943 (Opinion and Order entered January 6, 2017).

In this case, the Complainant is not requesting in its petition to withdraw that its complaint be referred to mediation. Rather it is seeking to abandon its cause of action. In addition, there is no evidence that the Complainant has abused the Commission's administrative process by filing multiple complaints with the Commission. Given these facts, there is no basis to dismiss the Complainant's complaint with prejudice. Since the Respondent's request that the Complainant's complaint be dismissed with prejudice is inconsistent with prior Commission decisions addressing dismissal with prejudice and withdrawal of pleadings, I will deny that request.

Turning finally to the public interest, the complaint does not allege facts that would impact the public interest. The complaint alleges that the Respondent is threatening to terminate the Complainant's service and that there are incorrect charges on its bill. The allegations do not appear to have an impact on other customers of Respondent. Therefore, the allegations in the complaint do not allege an impact on the public interest.

Having reviewed the petition to withdraw, any 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 the costs in time and money they would otherwise incur litigating the case. Granting the petition 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.

