

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Rick Iadeluca	:	
	:	
v.	:	C-2017-2597461
	:	
Pennsylvania Electric Company	:	

**INITIAL DECISION GRANTING
PETITION TO WITHDRAW COMPLAINT**

Before
David A. Salapa
Administrative Law Judge

INTRODUCTION

A customer filed this complaint against his electric utility alleging that counsel for the utility made false statements on behalf of the utility in a certificate of satisfaction. This decision grants the customer's request to withdraw the complaint.

HISTORY OF THE PROCEEDING

On March 27, 2017, Rick Iadeluca (Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against Pennsylvania Electric Company (Respondent). The complaint alleges that counsel for the Respondent made false statements on behalf of the Respondent in a certificate of satisfaction.

Attached to the complaint are documents referencing a Commission proceeding at F-2015-2482361. The documents set forth various alleged violations of the Public Utility Code and Criminal Code committed by the Respondent. The Complaint requests that the Commission

order the Respondent to reimburse the Complainant the costs he incurred, including attorney fees, in litigating the proceeding at F-2015-2482361.

On April 26, 2017, the Respondent filed an answer with new matter and preliminary objections. The answer admits that the Respondent provides residential electric service to the Complainant at the address shown on the complaint. The answer denies that the Respondent filed a certificate of satisfaction in the proceeding at F-2015-2482361. According to the answer, counsel for the Complainant filed a certificate of satisfaction in the proceeding at F-2015-2482361.

The answer asserts that the Respondent's actions in the proceeding at F-2015-2482361 were reasonable and lawful. The answer asserts that counsel for the Complainant and counsel for the Respondent successfully negotiated a settlement in the proceeding at F-2015-2482361. The settlement resulted in a credit of \$145.92 being posted to the Complainant's account on December 22, 2016. On December 30, 2016, counsel for the Complainant executed a certificate of satisfaction stating that the Complainant no longer wished to pursue the complaint.

The answer alleges that the Complainant's requests that the Commission levy a civil penalty and initiate a criminal investigation against the Respondent were dismissed in the proceeding at F-2015-2482361. The answer contends that, to the extent that this complaint is an attempt to revisit the issues settled in the proceeding at F-2015-2482361, it is untimely and insufficient. The answer also alleges that 66 Pa.C.S. § 316 and the doctrine of res judicata bar the Complainant's complaint in this proceeding.

The answer asserts that the Commission has no authority to award monetary damages to the Complainant. The answer further alleges that the Commission lacks the authority to award attorney fees.

The new matter alleges that the Commission lacks jurisdiction to resolve claims brought under the Criminal Code. The new matter asserts that the Commission lacks the authority to award monetary damages or attorney fees to the Complainant. The new matter

further argues that 66 Pa.C.S. § 316 and the doctrine of res judicata preclude the Complainant from pursuing the same claims resolved in the proceeding at F-2015-2482361. The answer with new matter requests that the Commission deny the Complainant's complaint.

The preliminary objections assert that the Commission lacks the authority to award monetary damages and attorney fees to the Complainant. The preliminary objections request that the Commission strike the Complainant's request for monetary damages and attorney's fees.

By notice dated June 28, 2017, the Commission notified the parties that it had assigned the case to me as motion judge. By order dated July 5, 2017, I sustained the preliminary objections and struck the portions of the complaint requesting monetary damages and attorney fees.

By notice dated July 10, 2017, the Commission scheduled an initial telephonic hearing for this matter on August 14, 2017 at 10:00 a.m. I issued a prehearing order dated July 21, 2017, addressing, inter alia, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

On August 9, 2017, the Complainant filed a letter stating that he was withdrawing his complaint due to the inability of his attorney to represent him in this proceeding due to the attorney's health. I will treat the Complainant's letter as a petition for leave to withdraw, filed pursuant to 52 Pa.Code § 5.94.

On August 10, 2017, the Respondent filed a letter stating that it did not oppose the Complainant's request to withdraw his complaint.

I cancelled the August 17, 2017 hearing and by notice dated August 10, 2017, the Commission notified the parties that the hearing was cancelled.

The withdrawal is ready for decision. For the reasons set forth below, I will grant the withdrawal.

FINDINGS OF FACT

1. The Complainant in this case is Rick Iadeluca.
2. The Respondent in this case is Pennsylvania Electric Company.
3. On March 27, 2017, the Complainant filed a complaint with the Commission against the Respondent.
4. On April 26, 2017, the Respondent filed an answer with new matter.
5. On August 9, 2017, the Complainant filed a letter stating that he was withdrawing his complaint
6. On August 10, 2017, the Respondent filed a letter stating that it did not oppose the Complainant's request to withdraw his complaint.

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.

The Complainant's August 9, 2017, letter does not comply with 52 Pa. Code §5.94 in that it does not fulfill the general requirements of a petition set forth in 52 Pa. Code §5.41.

The regulation at 52 Pa. Code §1.2(a) provides 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. Since the Complainant's August 9, 2017 letter does request that the Commission grant withdrawal of the complaint and a copy of the letter was served on the Respondent, it had notice of the request and the opportunity to respond.

I will ignore the procedural defects of the Complainant's request and treat the August 9, 2017 letter as a petition for leave to withdraw, filed pursuant to 52 Pa. Code §5.94, in order to secure a just, speedy and inexpensive determination of this proceeding, pursuant to 52 Pa. Code §1.2(a). This will not adversely affect the Respondent's substantive rights, pursuant to 52 Pa. Code §1.2(c), since it had notice of the issue and an opportunity to respond.

Turning first to the Complainant's petition to withdraw his March 27, 2017 complaint, the petition to withdraw requests that the Commission allow him to withdraw the complaint. The Commission has no interest in mandating that the Complainant continue litigation where he no longer wishes to pursue his complaint.

Turning next to any objections to the withdrawal of the March 27, 2017 complaint, the Respondent has stated that it does not oppose the withdrawal.

Turning finally to the public interest, the complaint does not allege facts that would impact the public interest. The complaint alleges that counsel for the Respondent made false statements on behalf of the Respondent in a certificate of satisfaction. 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.

2. The Commission's Rules of Practice and Procedure 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 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 the petition to withdraw the March 27, 2017 complaint of Rick Iadeluca filed at Docket No. C-2017-2597461 on August 9, 2017, is granted.

2. That the complaint of Rick Iadeluca at Docket No. C-2017-2597461, filed March 27, 2017, is withdrawn.

3. That the case at Docket No. C-2017-2597461 is marked closed.

Date: August 14, 2017

/s/
David A. Salapa
Administrative Law Judge