

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tri-Conn Alternative Services, Inc.	:	
	:	
v.	:	C-2016-2528321
	:	
EMS Southwest, Inc.	:	

INITIAL DECISION

Before
Mark A. Hoyer
Deputy Chief Administrative Law Judge

INTRODUCTION

This initial decision grants the petition for leave to withdraw the formal complaint filed by Tri-Conn Alternative Services, Inc. pursuant to 52 Pa.Code § 5.94(a).

HISTORY OF THE PROCEEDING

On February 9, 2016, Tri-Conn Alternative Services, Inc. (Complainant) filed a formal complaint with the Public Utility Commission (Commission) against EMS Southwest, Inc. (Respondent) alleging, among other things, that Respondent was providing paratransit services outside the scope of the authority granted to it by the Commission. As relief, Complainant sought, among other things, an order enjoining and/or prohibiting Respondent from offering, rendering, furnishing or supplying paratransit service outside the scope of the certificate of public convenience granted to it by the Commission.

On February 25, 2016, Respondent filed an answer and new matter. In new matter, Respondent averred that any service it provided outside the scope of its existing

Commission authority was exempt from Commission jurisdiction. Complainant filed a reply to Respondent's new matter on March 1, 2016.

On May 2, 2017, Complainant filed a letter petition for leave to withdraw the formal complaint. No response to the petition was filed by Respondent. On July 12, 2017, an interim order closing the hearing record was issued.

FINDINGS OF FACT

1. Complainant is Tri-Conn Alternative Services, Inc.
2. Respondent is EMS Southwest, Inc.
3. On May 2, 2017, Complainant filed a petition for leave to withdraw its formal complaint because it no longer wishes to pursue the formal complaint.
4. No objection was filed by Respondent.

DISCUSSION

The Commission is empowered and charged with the duty to enforce the requirements of the Public Utility Code. 66 Pa.C.S.A. § 501(a). As the party seeking an order from the Commission, Complainant bears the burden of proof in this case. Provisions at 66 Pa.C.S.A. § 332(a) state, “[e]xcept as may be otherwise provided in section 315 (relating to burden of proof) or other provisions of this part or other relevant statute, the proponent of a rule or order has the burden of proof.”¹

On May 2, 2017, Complainant filed a petition for leave to withdraw its formal complaint. No objection to the withdrawal request has been filed.

¹ Provisions at 66 Pa.C.S.A. § 315(a) do not apply in this proceeding because this matter did not arise upon the motion of the Commission, involve a proposed or existing rate of a public utility, or involve a complaint about a proposed increase in rates.

Pursuant to 52 Pa.Code § 5.94(a), 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 20 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.”

After considering Complainant’s request, it is apparent no justiciable matter remains. Complainant clearly indicated it no longer wants to pursue its formal complaint. It would be a waste of time and energy for Complainant, Respondent, and the Commission to proceed to litigate this proceeding at this time. It is in the public interest to permit Complainant to withdraw this formal complaint. Accordingly, Complainant’s written request to withdraw will be granted.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S.A. § 501 and 52 Pa.Code § 29.311, *et seq.*
2. The Commission has the power, and the duty, to enforce the requirements of the Public Utility Code.
3. Pursuant to 66 Pa.C.S.A. § 332(a), the burden of proof in this proceeding is on Complainant as the proponent of a Commission Order.
4. No litigable matter remains in this proceeding, and it is in the public interest to grant Complainant’s request to withdraw the formal complaint and to close the matter. 52 Pa.Code § 5.94(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the request of Tri-Conn Alternative Services, Inc. to withdraw its formal complaint filed on February 9, 2016 at Docket No. C-2016-2528321, is granted.
2. That the record at Docket No. C-2016-2528321 be marked closed.

Date: September 26, 2017

_____/s/_____
Mark A. Hoyer
Deputy Chief Administrative Law Judge