

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Alderwoods (Pennsylvania), Inc., a wholly owned subsidiary of Service Corporation International, t/a Burton L. Hirsch Funeral Home	:	
	:	
	:	
	:	C-2016-2522634
v.	:	
	:	
Duquesne Light Company	:	

INITIAL DECISION

Before
Conrad A. Johnson
Administrative Law Judge

This decision grants Complainant’s Petition to Withdraw Complaint.

PROCEDURAL BACKGROUND

On January 7, 2016, Alderwoods (Pennsylvania), Inc., a wholly owned subsidiary of Service Corporation International, t/a Burton L. Hirsch Funeral Home (Complainant or Alderwoods or Hirsch) filed a Complaint with the Pennsylvania Public Utility Commission (Commission) against Duquesne Light Company (Respondent or Duquesne). Alderwoods alleged in part that its funeral home located at 2704 Murray Avenue, Pittsburgh, Pennsylvania 15217 (service address) sustained a power outage on or about January 8 or 9, 2009. According to Alderwoods, the power outage resulted from a motor vehicle colliding into Duquesne’s utility pole. Alderwoods averred that Duquesne’s restoration of electric service ignited a fire and caused the destruction of the funeral home.¹

¹ For a complete and detailed recitation of the allegations, the reader is directed to the Complaint.

Complainant further asserted that the subject case was originally filed in the Court of Common Pleas of Allegheny County in the Civil Division at Docket No. GD-09-14720, on or about August 25, 2009. However, on September 14, 2015, Court of Common Pleas Judge Paul F. Luty, Jr. ordered the matter bifurcated and transferred to the Commission.

Complainant requested a decision in its favor and against Respondent and damages exceeding \$1,000,000 (one million dollars), together with interest and such other relief as the Commission deemed proper.

On January 29, 2016, Duquesne filed an Answer and New Matter to the Complaint. Duquesne's Answer admitted in part and denied in part the material allegations of the Complaint. In New Matter, Duquesne alleged, in responding to the outage at the service address, it used every reasonable effort to protect the public from danger and to reduce hazards to the public due to its provision of electric distribution service and its associated equipment and facilities. Duquesne requested a decision in its favor and against Complainant and such other relief as the Commission deemed proper.

On March 20, 2017, a Notice was issued to the Parties informing them that the undersigned Administrative Law Judge would conduct a prehearing conference on May 10, 2017, to establish the litigation schedule in this matter. The prehearing conference proceeded as scheduled. Counsel for Alderwoods and Duquesne Light Company participated in the prehearing conference, which resulted in the establishment of a litigation schedule with evidentiary hearings to be conducted on October 16 through 20, 2017.²

On September 29, 2017, Alderwoods filed with the Commission its Petition to Withdraw Complaint (Petition), averring in part as follows:

4. The parties have reached an amicable settlement of the matter.

² For a more detailed procedural history, the reader is directed to the First through the Sixth Interim Orders entered in this proceeding.

5. In accordance with the terms of the parties' settlement agreement, Hirsch has submitted a Praecipe to Settle, Discontinue and End with the Court of Common Pleas. See Exhibit A attached.

6. Given the settlement, the captioned matter should be discontinued, as there is no longer any dispute to adjudicate.

7. Once the Praecipe to Settle, Discontinue and End with the Court of Common Pleas is filed, there will no longer be any controversy pending in the Court, and the Court's September 14, 2015 bifurcation order will be moot.

Alderwoods' Exhibit A dated September 27, 2017, and apparently filed in the Court of Common Pleas of Allegheny County in the Civil Division at Docket No. GD-09-14720 reads as follows:

TO THE DEPARTMENT OF COURT RECORDS:

In accordance with Rule 229 of the Pennsylvania Rules of Civil Procedure, the captioned matter having been amicably settled by the parties, kindly mark the captioned matter settled, discontinued and ended, with each party to bear its own costs.

Alderwoods' Petition included a Certificate of Service indicating that service of a copy of the Petition was made upon counsel for Duquesne by electronic mail on September 29, 2017. No objection was filed to the Petition by any party within 10 days of service of the Petition.

For the reasons set forth below, Complainant's request to withdraw its Complaint will be granted.

FINDINGS OF FACT

1. Complainant is Alderwoods (Pennsylvania), Inc., a wholly owned subsidiary of Service Corporation International, t/a Burton L. Hirsch Funeral Home.

2. On January 7, 2016, Complainant filed a Complaint with the Pennsylvania Public Utility Commission against Respondent Duquesne Light Company.

3. Respondent Duquesne Light Company is a jurisdictional public utility providing electric service to Pennsylvania customers.

4. On January 29, 2016, Duquesne filed an Answer and New Matter to Complainant's Complaint.

5. On September 29, 2017, Complainant filed its Petition to Withdraw Complaint, averring the parties had reached an amicable settlement of the matter and requesting the matter be discontinued as there was no longer a dispute to adjudicate.

6. On September 29, 2017, Complainant served a copy of its Petition to Withdraw Complaint upon Respondent.

7. Respondent did not file any objection or response to the Petition to Withdraw Complaint within 10 days of service of the Petition.

DISCUSSION

Section 5.94 of the Commission's regulations, 52 Pa.Code § 5.94, in relevant part, provides:

(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 10 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.

The filing of Alderwoods' Complaint and Duquesne's Answer thereto constituted a contested proceeding. Therefore, the withdrawal Petition must be considered under the provisions of Section 5.94. In its Petition, Alderwoods states the parties reached an amicable settlement of the matter. Thus, there is no longer any dispute to adjudicate. Duquesne did not object to the withdrawal Petition.

The Commission has no interest in mandating that Alderwoods continue litigation when it has stated the parties have reached an amicable settlement of the matter. Furthermore, Section 703(a) of the Public Utility Code, 66 Pa.C.S. § 703(a), provides for dismissal of a complaint without a hearing, if in the Commission's opinion, a hearing is not necessary in the public interest. In the instant case, the parties have reached an amicable settlement thereby rendering the contested proceeding moot. Thus, proceeding to hearing would not be in the public interest.

Accordingly, granting Alderwoods' request to withdraw its Complaint will terminate the litigation, and thereby save the parties and the Commission the costs in time and money in litigating this matter to conclusion without impacting the public interest.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding.
2. Section 5.94 of the Commission's Rules of Practice and Procedure, 52 Pa.Code § 5.94, permits a party to withdraw a pleading in a contested proceeding by permission of the presiding officer or Commission.
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.

4. Section 703(a) of the Public Utility Code, 66 Pa.C.S.A § 703(a), provides for dismissal of a complaint without a hearing, if in the Commission’s opinion, a hearing is not necessary in the public interest.

ORDER

THEREFORE,

IT IS ORDERED:

1. That Complainant Alderwoods (Pennsylvania), Inc., a wholly owned subsidiary of Service Corporation International, t/a Burton L. Hirsch Funeral Home’s Petition to Withdraw Complaint filed against Respondent Duquesne Light Company at Docket No. C-2016-2522634 is granted.

2. That Alderwoods (Pennsylvania), Inc., a wholly owned subsidiary of Service Corporation International, t/a Burton L. Hirsch Funeral Home’s Complaint filed against Duquesne Light Company at Docket No. C-2016-2522634 is hereby withdrawn.

3. That the Secretary’s Bureau shall mark Docket No. C-2016-2522634 closed.

Date: October 13, 2017

_____/s/
Conrad A. Johnson
Administrative Law Judge