

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tanya Johnson	:	
	:	
v.	:	C-2016-2549620
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

This Initial Decision grants the Complainant’s Petition for Leave to Withdraw her Complaint.

HISTORY OF THE PROCEEDING

On May 16, 2016, Tanya Johnson (Complainant) filed a formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant placed a checkmark in the box marked “other” and wrote in “[t]his bill does not belong to me. I’ve never had a bill at this rate.” Under the “requested relief” section, the Complainant wrote in “I would like this complaint to be erased. It’s not a bill that I owe.”

On June 27, 2016, Respondent filed an Answer maintaining that the bill for service at 1240 W. Oakdale Street, Philadelphia, PA (service address) belongs to the Complainant. Respondent further answered: that the Complainant established service at the service address as of July 3, 1998;

that the Complainant has been listed as the owner of the property since February 23, 1999; that PGW records show that during her time as a customer, the Complainant accrued a balance of \$7,741.38; that on October 4, 2004, a lien was filed against the property in the amount of \$1,389.84; that on April 18, 2005, a lien was filed against the property in the amount of \$5,440.42; and that on February 23, 2005, the account in the Complainant's name was closed.

Also on June 27, 2016, Respondent filed Preliminary Objections and Motion to Strike to the Complaint. Respondent repeated the factual averments from its Answer to the Complaint, asserted that the Commission is without jurisdiction to decide matters involving the imposition of a municipal lien, and requested that the Commission sustain its Preliminary Objection to the Complaint and strike off the requested relief as impertinent matter. PGW endorsed its Preliminary Objection with a Notice to Plead. Complainant did not file a response to PGW's Preliminary Objection.

On August 15, 2016, PGW's Preliminary Objection was assigned to Administrative Law Judge (ALJ) Darlene D. Heep as Motion Judge.

By Order dated August 19, 2016, ALJ Heep granted PGW's Motion to Strike regarding claims that pertain to the validity or enforcement of a municipal lien placed upon the service address, and regarding any claims in this matter beyond the statute of limitations. ALJ Heep denied PGW's Preliminary Objection and Motion to Strike regarding any billing and rate claims that arose after May 2012.

By Hearing Notice dated October 6, 2017, a hearing was scheduled for December 5, 2017, at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on October 27, 2017. The Prehearing Order directed the parties to comply with various procedural requirements and explained that the Complainant bears the burden of proof to establish that the Respondent violated its tariff, the Public Utility Code, or a Commission Order or regulation, and that she is entitled to the relief requested in the Complaint.

The hearing convened as scheduled on December 5, 2017. Graciela Christlieb, Esq.,

counsel for PGW, was present with a witness and was prepared to proceed. Ms. Johnson was also present. At the outset of the hearing, the Complainant indicated that she wanted to withdraw her Complaint. Complainant also submitted a hand-written statement indicating that she was withdrawing her Complaint. PGW had no objection to the Complainant's request to withdraw her Complaint.

The record closed on January 10, 2018, upon receipt of the transcript. For the reasons set forth below, the Complainant's request to withdraw her Complaint is granted.

FINDINGS OF FACT

1. The Complainant in this proceeding is Tanya Johnson.
2. The Respondent in this proceeding is Philadelphia Gas Works.
3. On May 16, 2016, the Complainant filed a formal Complaint against Philadelphia Gas Works.
4. On June 27, 2016, Respondent filed its Answer to the Complainant's Complaint.
5. On June 27, 2016, Respondent filed Preliminary Objections and Motion to Strike.
6. By Order dated August 19, 2016, Respondent's Preliminary Objections and Motion to Strike were granted in part and denied in part.
7. By Hearing Notice dated October 6, 2017, a hearing was scheduled for December 5, 2017 at 10:00 a.m. to address the remaining issues on the Complainant's Complaint.
8. On December 5, 2017, the Complainant submitted a written and signed statement indicating her intent to withdraw her Complaint against Philadelphia Gas works.

9. Respondent does not object to the Complainant's request to withdraw her 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 filing, with the Commission and service to parties, 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.

Although Complainant's December 5, 2017 document does not conform to the requirements of a formal petition to withdraw under Section 5.94(a) of the Commission's regulations, waiver of this requirement is permitted. Under Section 1.2, 52 Pa.Code § 1.2, a presiding officer at any stage of an action or proceeding may waive a requirement of a rule when necessary or appropriate, if waiver does not adversely affect a substantive right of a party. Such are the circumstances in this case. Therefore, the document received on December 5, 2017, for purposes of this decision, will be treated as a petition to withdraw a pleading and the procedural defects will be disregarded.

The Complainant has indicated that she wants to withdraw her Complaint against PGW. PGW has indicated that it does not oppose the Complainant's request to withdraw her Complaint. Under these circumstances, granting the Complainant's request to withdraw her Complaint is in the public interest because doing so will eliminate the need for litigation and save the parties any additional costs in time and money that they would otherwise incur litigating the case. Accordingly, the Complainant's request to withdraw her Complaint is granted.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to and subject matter of this proceeding. 66 Pa.C.S.A. § 701.
2. The Commission's Rules of Practice and Procedure at 52 Pa.Code § 5.94(a) permit parties to withdraw pleadings 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. 52 Pa.Code § 5.94(a).
4. Granting the Complainant's withdrawal request is in the public interest.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complainant's Petition for Leave to Withdraw her Complaint filed at Docket No. C-2016-2549620 is granted;
2. That the Complaint of Tanya Johnson against Philadelphia Gas Works filed May 16, 2016 at Docket No. C-2016-2549620 is withdrawn; and

3. That the Secretary's Bureau shall mark Docket No. C-2016-2549620 as closed.

Date: March 12, 2018

_____/s/_____
Christopher P. Pell
Deputy Chief Administrative Law Judge