

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Brian Schmidt	:	
	:	
v.	:	C-2016-2574738
	:	
PECO Energy Company	:	

INITIAL DECISION
GRANTING PETITION TO WITHDRAW COMPLAINT

Before
Darlene D. Heep
Administrative Law Judge

INTRODUCTION

This decision grants Complainant’s request to withdraw this action.

HISTORY OF THE PROCEEDING

On November 3, 2016, Brian Schmidt (Complainant) filed a formal complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO or Respondent). In the Complaint, Mr. Schmidt sought a payment arrangement.

PECO filed an Answer on November 18, 2016. In the Answer, PECO denied all material allegations in the Complaint. PECO also averred that Mr. Schmidt had an active Commission-issued payment arrangement and therefore, in accordance with 66 Pa. C.S. § 1405(d), he was not entitled to another Commission-issued payment arrangement because he had not experienced a change in income.

The matter was set for hearing on April 30, 2018. On March 30, 2018, Mr. Schmidt faxed a letter to the Commission that states, "I no longer need the hearing for PECO, please close my case." The record closed upon PECO notifying the undersigned that it did not oppose the request to withdraw.

The matter is ready for a decision. For the reasons set forth below, the request for leave to withdraw is granted.

FINDINGS OF FACT

1. The Complainant in this case is Brian Schmidt.
2. The Respondent in this case is PECO Energy Company.
3. On November 3, 2016, the Complainant filed a Complaint with the Commission against the Respondent seeking a payment arrangement.
4. At the time of the Complaint filing, the Complainant was a PECO customer at the service address 2024 Garrison Drive, Chester Springs, Pennsylvania.
5. This matter was set for hearing on February 16, 2017.
6. The hearing was continued at the Complainant's request after he informed the Commission that he would be out of town for work on February 16, 2017.
7. The hearing was rescheduled for April 24, 2017.
8. On April 18, 2017, the Commission was advised that the Complainant had filed for bankruptcy.

9. On April 25, 2017, an Order staying the matter pending the bankruptcy filing was issued.

10. On November 8, 2017, the Commission was notified that the Complainant's bankruptcy matter was dismissed, and a Hearing Notice was issued setting an Initial Hearing for December 18, 2017, at 2:00 p.m.

11. Due to a court reporter conflict, a February 14, 2018, Hearing Notice rescheduled the matter for Initial Hearing on April 30, 2018.

12. On March 30, 2018, Mr. Schmidt sought to withdraw his Complaint and faxed a letter to the Commission that states, "I no longer need the hearing for PECO, please close my case."

13. PECO does not oppose the request 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. It provides as follows:

§ 5.94. Withdrawal of pleadings in a contested proceeding.

(a) Except as provided in subsection (b), 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.

52 Pa.Code § 5.94.

Complainant, acting *pro se*, faxed a letter to the undersigned requesting to withdraw his Complaint. The letter does not technically comply with the form of a petition required by Section 5.94 of the Commission's regulations. Nevertheless, 52 Pa.Code § 1.2(a) provides that the rules of procedure may be "liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which it is applicable" and that "the . . . presiding officer at any stage of an action or proceeding may disregard an error or defect of procedure which does not affect the substantive rights of the parties." *Id.*

Counsel for PECO has stated that the company does not oppose the request to withdraw. It is the Company's understanding that the Complainant no longer owns or lives at the service address and no longer has an active account with PECO.

Complainant wishes to withdraw his Complaint and PECO does not object. There are no other parties involved in this matter, and the substantive rights of the parties will not be affected by disregarding any procedural error and accepting the Complainant's written request to withdraw his Complaint. Rather than requiring that Complainant file a written request in compliance with 52 Pa.Code § 5.94, the letter will be accepted as a petition for leave to withdraw because doing so permits a just, speedy and inexpensive determination regarding the request.

In determining whether the withdrawal will be permitted, 52 Pa.Code § 5.94 requires a presiding officer to consider any objections thereto and the public interest. First, there are no objections to the request to withdraw. Second, the allegations in the Complainant's Complaint do not raise issues that impact other customers of the Respondent or the public interest. The Complaint involved only the concerns of the Complainant. Allowing Mr. Schmidt to withdraw is in the public interest because it will save the expenditure of resources on a futile effort.

In view of the request to withdraw, absence of objections to the request and the fact that there is no negative impact upon the public interest, there is no reason to deny Complainant's request to withdraw his Complaint.

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 request of Brian Schmidt to withdraw his Complaint filed at Docket No. C-2016-2574738 is granted.

2. That the record at Docket No. C-2016-2574738 be marked closed.

Date: May 9, 2018

/s/
Darlene D. Heep
Administrative Law Judge