

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Nina Kinard	:	
	:	
v.	:	F-2017-2640056
	:	
PECO Energy Company	:	

**INITIAL DECISION GRANTING
REQUEST TO WITHDRAW COMPLAINT**

Before
David A. Salapa
Administrative Law Judge

INTRODUCTION

A customer filed this complaint alleging that her electric utility bill contained incorrect charges. This decision grants the customer’s request to withdraw the complaint.

HISTORY OF THE PROCEEDING

On December 21, 2017, Nina Kinard (Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (Respondent). The complaint is a timely appeal of the Commission’s Bureau of Consumer Services (BCS) decision, dated November 7, 2017 at BCS No. 3541767, dismissing the Complainant’s informal complaint.

The complaint alleges that the Complainant’s utility bill contained incorrect charges. The complaint alleges that the Respondent transferred charges to the Complainant’s

account from another account. The complaint requests that the Commission direct the Respondent to remove the transferred charges from the Complainant's utility bill.

On January 12, 2018, the Respondent filed an answer to the complaint. The answer admits that the Respondent provided service to the Complainant at the address shown on the complaint. The answer admits that the Respondent transferred charges from a prior account to the Complainant's current account. These charges included a fee assessed for meter tampering. Attached to the answer and marked as Exhibits 1-3 are copies of account statements for the Complainant's accounts with the Respondent.

The answer also alleges that on July 5, 2017, the Complainant filed an informal complaint with BCS at BCS No. 003541767. The answer states that BCS issued a decision on November 7, 2017, dismissing the Complainant's informal complaint. Attached to the answer and marked as Exhibits 4-5 are copies of a report of the BCS informal complaint and the BCS decision. The answer requests that the Commission dismiss the Complainant's complaint.

By notice dated February 5, 2018, the Commission scheduled an initial telephonic hearing for this matter on March 16, 2018 at 10:00 a.m. and assigned the case to me. I issued a prehearing order dated February 5, 2018, addressing, inter alia, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

On March 16, 2018, the Respondent filed a motion requesting a continuance. In support of its request, the Respondent alleged that it needed additional time to investigate the meter tampering issue raised by the Complainant's complaint. The motion stated that the Respondent informed the Complainant of its request and the Complainant did not object to the request for continuance.

I granted the request for continuance and by notice dated March 22, 2018, the Commission scheduled an initial telephonic hearing for this matter on April 23, 2018 at 10:00 a.m.

On April 18, 2018, the Respondent filed a motion requesting a continuance. In support of its request, the Respondent alleged that its witness would be unavailable due to a previously scheduled vacation. The motion indicated that the Respondent had informed Complainant of its request for continuance and the Complainant did not object to the continuance.

I granted the request for continuance and by notice dated April 19, 2018, the Commission scheduled an initial telephonic hearing for this matter on June 11, 2018 at 10:00 a.m.

I conducted the initial telephonic hearing as scheduled on June 11, 2018. The Complainant appeared pro se. Shawane L. Lee, Esquire, represented the Respondent.

The Complainant indicated that she no longer wished to pursue her complaint and wished to withdraw her complaint. N.T. 5. The Respondent did not object to the withdrawal. I will treat the Complainant's statements as a request to withdraw her complaint. N.T. 5.

The initial hearing resulted in a transcript of eight pages. The record closed on July 3, 2018, the date the transcript was filed with the Secretary's Bureau.

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 Nina Kinard.
2. The Respondent in this case is PECO Energy Company.
3. On December 21, 2017, the Complainant filed a complaint with the Commission against the Respondent.

4. On January 12, 2018, the Respondent filed an answer to the complaint.
5. A telephonic hearing was held on June 11, 2018.
6. The Complainant wishes to withdraw her complaint. N.T. 5.
7. The Respondent does not object to withdrawal of the complaint. N.T. 5.

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 statements at the June 11, 2018 hearing do not comply with 52 Pa. Code § 5.94 in that they do not fulfill the general requirements of a petition set forth in 52 Pa. Code § 5.41. However, 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 statements were made at the hearing in the presence of counsel for the Respondent, the Respondent had notice of the withdrawal and an opportunity to respond.

I will ignore the procedural defects of the Complainant's statements and treat them as a petition for leave to withdraw, filed pursuant to 52 Pa. Code § 5.94, 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 request to withdraw her December 21, 2017 complaint, the Complainant did not provide a reason for her request to withdraw other than it was not in her best interest to pursue her complaint at this time. However, the Commission has no interest in mandating that the Complainant continue litigation where she no longer wishes to pursue her complaint.

Turning next to any objections to the withdrawal of the December 21, 2017 complaint, the Respondent, through its counsel, did not oppose the withdrawal. The Complainant and the Respondent are the only parties involved in this proceeding. Therefore, there are no objections to the Complainant's withdrawal.

Turning finally to the public interest, the complaint does not allege facts that would impact the public interest. The complaint alleges a billing dispute. The allegations do not raise issues that would have an impact on other customers of the Respondent. Therefore, the allegations in the complaint do not allege an impact on the public interest.

Having reviewed the request 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 presiding officer or the Commission may disregard an error or defect of procedure which does not affect the substantive rights of the parties. 52 Pa.Code § 1.2(a).

