

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Belfield Community Development Corp.	:	
	:	
v.	:	C-2017-2625808
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
Angela T. Jones  
Administrative Law Judge

**INTRODUCTION**

In this proceeding, Belfield Community Development Corporation (Complainant) filed a formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO or Company or Respondent). The Complainant at the initial hearing determined it was appropriate to file a Motion for Leave to Withdraw the Complaint (MTW), which was subsequently filed with the Commission. This decision grants the MTW.

**HISTORY OF THE PROCEEDING**

On September 19, 2017, the Complainant filed a Complaint against the Respondent. The Complainant alleged that there were incorrect charges on its bills and issues with the meter and the usage. As relief, the Complainant requested the meter be changed and to be granted a refund due to overcharges.

The Complaint was served on the Respondent electronically by the Commission's Secretary on September 22, 2017.<sup>1</sup>

On October 10, 2017, the Respondent filed its Answer and New Matter, properly accompanied by a Notice to Plead. In its Answer, the Respondent denied the material allegations of the Complaint. The Respondent averred that the Complainant is a commercial customer operating a business at 414 East Penn Street, Philadelphia, Pennsylvania (service address).

The Respondent stated that the Complainant filed an informal complaint with the Commission's Bureau of Consumer Services at Case No. 003531102 regarding a meter that overcharged the usage at the service address. After an investigation of the informal complaint, BCS issued a decision on August 1, 2017, which dismissed the informal complaint because BCS does not have jurisdiction over commercial accounts.

In New Matter, the Respondent alleged that the Complainant is a commercial customer and is required to be represented by counsel in an adversarial proceeding. The Respondent averred that the Complainant incorporated on March 11, 2004.

The Complainant was not represented by an attorney admitted to practice before the Supreme Court of Pennsylvania or in accordance with the Pennsylvania Bar Admission Rules consistent with 52 Pa.Code § 1.21(b). The Respondent requested that the Commission issue a date certain to require the Complainant to have appropriate representation.

A Hearing Notice was issued on November 14, 2017, in this proceeding scheduling a telephonic initial hearing on January 8, 2018. The Hearing Notice assigned the Complaint to the undersigned Administrative Law Judge (ALJ).

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<sup>1</sup> PECO has signed a waiver of the Section 702 requirements for service of formal complaints, 66 Pa.C.S. § 702, and has agreed to electronic service instead under the Commission's waiver of 702 program. Service is listed in the audit history of the case as having occurred on September 22, 2017.

A Prehearing Order dated November 14, 2017, was sent to the parties providing the procedural rules to the proceeding. The undersigned directed that the Complainant obtain the appropriate legal representation by close of business (4:30 p.m.) on December 8, 2017.

On December 15, 2017, the Respondent filed a Motion for Judgment on the Pleadings (MJOP), which asserted that the Complainant is a corporate entity and has not provided evidence that it is represented by counsel.

A letter dated December 20, 2017,<sup>2</sup> and received by the undersigned on December 26, 2017, requested that the hearing be changed to an in-person hearing, asked for additional time to find the appropriate legal representation, and stated that the Complainant has limited funds.

On the date of the scheduled hearing, Monday, January 8, 2018, the undersigned was unable to report to the Commission's Philadelphia office due to a personal emergency.

By Order dated January 9, 2018, the undersigned denied the MJOP and found it reasonable to grant the Complainant more time to obtain legal representation. The January 9, 2018, Order directed that that the evidentiary hearing be rescheduled and changed to an in-person hearing.

A Hearing Notice dated January 9, 2018, canceled the evidentiary hearing previously scheduled for January 8, 2018 and rescheduled the evidentiary hearing for March 9, 2018, to be conducted in-person at the Commission offices in Philadelphia.

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<sup>2</sup> The letter was from Suetwedien Muhammad who is identified as the President of the Complainant and who signed the Complaint.

By letter dated January 30, 2018, it was communicated to the undersigned that the Complainant was represented by Timothy Welbeck, Esquire.<sup>3</sup>

By email on March 8, 2018, the Respondent filed a Motion for Continuance of the Complaint, which requested that the hearing be rescheduled due to the unavailability of a key witness. Two winter snowstorms in the Respondent's territory caused the priority of the witness and any other viable substitute to be in the field to address power restoration rather than testifying at the scheduled hearing.

By Order dated March 8, 2018, the Respondent's Motion for a Continuance of the Complaint was granted. The proceeding was ordered to be rescheduled.

An electronic invitation was sent to the undersigned on March 19, 2018, to reschedule an initial, in-person, evidentiary hearing for the Complaint on May 11, 2018. Due to an administrative error, the parties did not receive any notice of the rescheduled evidentiary hearing for May 11, 2018.

By Hearing Notice dated May 11, 2018, an initial, in-person, evidentiary hearing was scheduled for July 9, 2018.

On July 9, 2018, the initial, in-person, evidentiary hearing convened as scheduled. Attorney Welbeck was present representing the Complainant and was accompanied by Mr. Muhammad. Ms. Shawane L. Lee, Esquire, was present representing the Respondent and was accompanied by three potential witnesses. The parties agreed after considering the facts that the Complainant would withdraw its Complaint.

By email, Attorney Welbeck submitted an MTW on July 11, 2018. Also, by email on July 11, 2018, Attorney Lee submitted a letter stating the Respondent does not object to the

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<sup>3</sup> The letter did not show that it was copied to opposing counsel or filed with the Commission's Secretary. The undersigned cured the shortcomings by filing the letter with the Commission's Secretary and sending the letter by electronic mail (email) to counsel for PECO.

MTW. The undersigned filed the MTW and the Respondent's letter stating no objection to the MTW with the Commission's Secretary on July 13, 2018.

The record closed upon receiving the Respondent's response to the MTW on July 11, 2018. This matter is ripe for decision.

### DISCUSSION

This matter is a contested proceeding to determine whether the Complainant had incorrect charges on its bill and had incorrect metered usage.

The Complainant by motion has requested that the Complaint be withdrawn stating, "the issue is no longer contested." MTW at 2, ¶ 9.

Commission regulations address the withdrawal of pleadings in a contested proceeding at Section 5.94(a) of Title 52 of the Pennsylvania Code which states,

**§ 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(a).

Section 1.8 of Title 52 of the Pennsylvania Code states, under “Pleading,”

An application, **complaint**, petition, answer, motion, preliminary objection, protest, reply, order to show cause, new matter and reply to new matter or other similar document filed in a formal proceeding.

52 Pa.Code § 1.8 (emphasis added). Based on the definition for pleading, the instant Complaint is a pleading.

The Complainant notes in the MTW that it is no longer interested in prosecuting the Complaint because the parties have come to an agreement that satisfies its concerns and nullifies the need for any further hearings before the Commission. MTW at 1, ¶ 3.

It is noted that the Complainant performed this action under its own discretion. It is compelling that the Respondent does not object to the withdrawal of the Complaint.

It curtails the costs of the Commission and the parties, Belfield Community Development Corporation and PECO, to cease any further consideration of the Complaint if the matter is moot or otherwise resolved and is not viable or in need of pursuit by the Complainant. For these reasons, I find that the MTW is in the public interest.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to and the subject matter of this proceeding. 66 Pa.C.S. § 701.

2. 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

