

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Michele Pugh	:	
	:	
v.	:	C-2018-3003890
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Alphonso Arnold III
Special Agent

INTRODUCTION

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

HISTORY OF THE PROCEEDING

On August 3, 2018, Michele Pugh (Complainant) filed a Complaint with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (Respondent or PECO). The Complainant indicated that PECO was threatening to shut off her service or has already shut off her service and asked for a payment agreement.

On August 15, 2018, the Respondent filed an Answer to the Complaint. PECO alleged that the Complainant was not entitled to a Commission-issued payment agreement

because her outstanding balance consists of Customer Assistance Program arrearages.¹ PECO requested that the Commission dismiss the Complainant's Complaint.

By Hearing Notice dated August 20, 2018, the Commission scheduled this matter for a call-in telephonic hearing on Wednesday, October 17, 2018, at 10:00 a.m. and assigned the case to me.

I issued a Prehearing Order, dated August 22, 2018, addressing, *inter alia*, the method by which the parties could call-in to participate in the hearing and the procedures applicable to the hearing.

On October 17, 2018, at approximately 9:15 a.m., I received a phone call from Shawane L. Lee, Esquire, attorney for PECO. Attorney Lee informed me that she had received an email from Ms. Pugh requesting to withdraw her Complaint and that PECO had no objections to Ms. Pugh's withdrawal request. Following our conversation, Attorney Lee forwarded me Ms. Pugh's email.

The record closed on October 17, 2018, following the receipt of the Complainant's email which will be treated as a properly submitted Petition to Withdraw. For the reasons discussed below, the Complainant's Petition to Withdraw her Complaint will be granted, without prejudice.

FINDINGS OF FACT

1. The Complainant is Michele Pugh.
2. The Respondent is PECO Energy Company.
3. The Complainant filed a Complaint on August 3, 2018.

¹ **Customer assistance programs.**--Customer assistance program rates shall be timely paid and shall not be the subject of payment arrangements negotiated or approved by the commission. 66 Pa.C.S. § 1403(c).

4. The Respondent filed an Answer on August 15, 2018.

5. A Hearing Notice, dated August 20, 2018, scheduled the matter for a call-in telephonic hearing on October 17, 2018, at 10:00 a.m.

6. On October 17, 2018, prior to the hearing, the Complainant informed the Respondent through email that she wished to withdraw her Complaint.

7. The Respondent has no objections to the Complainant's request to withdraw her Complaint.

DISCUSSION

A request to withdraw a pleading in a contested proceeding is governed by Section 5.94 of the Commission's regulations, which states as follows:

- (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).

The Complainant informed the Respondent of her intent to withdraw her Complaint through email. Attorney Lee informed me of the Complainant's request at approximately 9:15 a.m. on the day of the hearing. Following our conversation, PECO forwarded me the Complainant's email. The email reads as follows:

From: Michele Durham <mdurham37.md@gmail.com>
Sent: Wednesday, October 17, 2018 9:11:09 AM
To: Lee, Shawane L:(PECO)
Subject: [EXTERNAL] Docket # C20183003890

Hello Ms. Lee,

I'd like to withdraw my case from PECO; Ms. Ferrier and I have come to an agreement when I made a settlement offer back in August for \$2300. If you have any further questions or concerns please feel free to contact me.

Thank You!
Michele Pugh-Durham

PECO has no objections to the Complainant's withdrawal request.

It must be addressed that the request to withdraw the Complaint does not comply with the Commission's regulations at 52 Pa. Code § 5.94(a) in that the request was not made through the filing of a Petition with the Commission, nor was it served upon myself. I will choose to disregard these errors in procedure. Section 1.2 of the Commission's regulations allows for a presiding officer to disregard an error or defect of procedure which does not affect the substantive rights of the parties, and provides in relevant part:

(a) This subpart shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which it is applicable. The Commission or 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.

* * *

(c) The Commission or presiding officer at any stage of an action or proceeding may waive a requirement of this subpart when necessary or appropriate, if the waiver does not adversely affect a substantive right of a party.

(d) These liberal construction provisions apply with particularity in proceedings involving pro se litigants.

* * *

52 Pa. Code § 1.2.

PECO's substantive rights will not be affected by my decision to disregard the errors in question as PECO stated that it has no objections to the Complainant's request to withdraw her Complaint. Thus, I will treat the Complainant's request to withdraw her Complaint, made through email, as a properly submitted Petition to Withdraw.

As stated, a presiding officer will determine whether a Petition to Withdraw will be permitted after considering any objections to the Petition and the public interest. PECO has no objections to the Complainant's Petition. The public interest will not be negatively affected by the granting of the Complainant's Petition because the allegations raised in the Complainant's Complaint raise issues that affect only the Complainant. The issues raised do not directly impact other customers of PECO or the public interest.

Having reviewed the Petition to Withdraw, PECO's statement that it has no objections to the request, and the public interest, I conclude that the Petition to Withdraw should be granted. Granting the Petition to Withdraw will terminate the litigation, ensure a just and speedy result, and save the parties costs in terms of the time and money that they would otherwise spend litigating the case.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to 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. 52 Pa. Code § 5.94(a).
3. 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).

4. 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. 52 Pa. Code § 1.2.

5. The Complainant's request to withdraw the Complaint should be granted because there is no objection to the request and granting the request is in the public interest.

ORDER

THEREFORE,

IT IS ORDERED:

1. That Michele Pugh's Petition to Withdraw her Complaint is granted.
2. That the Complaint filed by Michele Pugh against PECO Energy Company at Docket Number C-2018-3003890 is hereby withdrawn without prejudice.
3. That the Docket at Docket No. C-2018-3003890 be marked closed.

Date: October 17, 2018

/s/
Alphonso Arnold III
Special Agent