

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	C-2017-2610579
	:	
Nasser Limousine, LLC	:	

INITIAL DECISION

Before
Benjamin J. Myers
Administrative Law Judge

INTRODUCTION

This decision grants the Bureau of Investigation and Enforcement's (I&E) unopposed petition for leave to withdraw the complaint in this matter.

HISTORY OF THE PROCEEDING

On August 8, 2017, I&E filed a formal complaint against Nasser Limousine, LLC (Respondent). This complaint stems from an informal complaint filed with the Pennsylvania Public Utility Commission (Commission) alleging that Respondent was offering transport to passengers in a vehicle with a seating capacity of 11 passengers, excluding the driver, when Respondent was not certificated with the Commission to transport passengers in vehicles with that type of seating capacity. The complaint alleged that Respondent violated Section 1102 of the Public Utility Code, 66 Pa.C.S. § 1102, by providing transportation in a service type not authorized by the Commission and sought relief in the form of a civil penalty of \$1,000 per day that the vehicles were operated for a total civil penalty of \$10,000.

On August 28, 2017, Respondent filed an answer to the complaint denying that the two vehicles at issue had a seating capacity of 11 passengers, excluding the driver. The answer further denied that more than 10 passengers, excluding the drivers, utilized the vehicles during the period in question, including the 10 days between April 28, 2017 and June 10, 2017.

A notice was issued on August 30, 2018 scheduling this matter for an initial hearing on Tuesday, October 16, 2018 at 10:00 a.m. in Harrisburg.

In anticipation of that initial hearing, a prehearing order was issued on August 31, 2018 addressing, inter alia, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

By Secretarial Letter dated October 3, 2018, Respondent's Certificate of Public Convenience (Certificate) was cancelled at Docket No. C-2018-3003286 for failing to maintain evidence of liability insurance on file with the Commission. Upon learning that Respondent's Certificate was cancelled, I&E made contact with the Office of Administrative Law Judge (OALJ) on October 9, 2018 regarding a cancellation of the initial hearing and that it intended to request that its complaint in this matter be withdrawn. I&E further indicated that it had not received any objections from Respondent regarding its intent to withdraw the complaint in this matter.

On October 10, 2018, a cancellation notice was issued cancelling the October 16, 2018 initial hearing. On October 11, 2018, I&E filed a petition for leave to withdraw the complaint in this matter. There has been no objection raised by the Respondent regarding this petition. For the reasons discussed below, I&E's petition will be granted.

FINDINGS OF FACT

1. The Complainant in this matter is the Commission's Bureau of Investigation and Enforcement.

2. The Respondent in this matter is Nasser Limousine, LLC.
3. On August 8, 2017, Complainant filed a formal complaint against the Respondent.
4. On August 28, 2017, Respondent filed an answer to the complaint.
5. A notice was issued on August 30, 2018 scheduling this matter for an initial hearing on October 16, 2018.
6. By Secretarial Letter dated October 3, 2018, Respondent's Certificate of Public Convenience was cancelled at Docket No. C-2018-3003286 for failing to maintain evidence of liability insurance on file with the Commission.
7. On October 10, 2018, a cancellation notice was issued cancelling the October 16, 2018 initial hearing.
8. On October 11, 2018, Complainant filed a petition for leave to withdraw the complaint in this matter.
9. Respondent has not filed an objection to Complainant's petition for leave to withdraw the 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 for the withdrawal of pleadings through 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. Here, Complainant has

requested the withdrawal of its complaint against the Respondent through a petition for leave to withdraw a pleading as provided under 52 Pa. Code § 5.94.

The Commission has considered the withdrawal of pleadings in the past. In PPLICA v. PPL Elec. Utils. Corp., Docket No. C-2010-2153656, 2012 Pa. PUC LEXIS 39 (Order entered Jan. 12, 2012), the Commission found that a request to withdraw a complaint “should be viewed as a simple procedural request, and should be granted without conditions or Commission pronouncements related to the merits of the issues raised by the Complaint, or issues that may or may not be raised in other proceedings.” Id. at 14. There have been no objections raised by Respondent to the withdrawal of the complaint in this matter. There is no indication that requiring the Complainant to move forward with a complaint it does not wish to pursue would be in the public interest. Although an operator providing service in a manner inconsistent with the approved authority is a matter of public interest that may affect more than just the parties to this proceeding, in this case, the Respondent no longer has authority to provide any service since the certificate of public convenience was recently cancelled. Complainant’s motion to withdraw the complaint in this matter will therefore be granted.

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 Commission’s Rules of Practice and Procedure at 52 Pa. Code § 5.94 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.

4. A request to withdraw a complaint should be viewed as a simple procedural request and should be granted without conditions or Commission pronouncements related to the merits of the issues raised by the complaint, or issues that may or may not be raised in other proceedings. PPLICA v. PPL Elec. Utils. Corp., Docket No. C-2010-2153656, 2012 Pa. PUC LEXIS 39 (Order entered Jan. 12, 2012).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the petition of the Bureau of Investigation and Enforcement for leave to withdraw the complaint at Docket No. C-2017-2610579 is granted.
2. That the complaint at Docket No. C-2017-2610579 is withdrawn.
3. That the docket at Docket No. C-2017-2610579 is marked closed.

Date: October 25, 2018

_____/s/
Benjamin J. Myers
Administrative Law Judge