

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Charles Franklin and Cynthia Franklin	:	
	:	
v.	:	C-2018-3004479
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Alphonso Arnold III
Special Agent

INTRODUCTION

This Initial Decision grants the Complainants' Petition to Withdraw the Complaint.

HISTORY OF THE PROCEEDING

On September 5, 2018, Charles and Cynthia Franklin¹ filed a Complaint, written by Cynthia Franklin (Ms. Franklin), with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (Respondent or PGW). As the daughter of Charles Franklin (Mr. Franklin), Ms. Franklin indicated, inter alia, that her parents need assistance from the Commission to help pay their bills because their service has been shut off and they need service due to their age and health issues.

¹ Initially, the caption of this case listed only Charles Franklin. However, both Charles and Cynthia Franklin are listed as Complainants on the Formal Complaint and both Charles and Cynthia Franklin are listed on the Verification and Signature section of the Formal Complaint.

On September 26, 2018, the Respondent filed an Answer to the Complaint. The Respondent admitted that service was terminated at the service address. To restore service, PGW stated that Mr. Franklin could pay his full outstanding balance plus a reconnection fee or reapply for PGW's Customer Responsibility Program after paying a cure amount. The Respondent requested that the Commission find against the Complainant and dismiss the Complaint.

By Hearing Notice issued October 12, 2018, the Commission scheduled this matter for a call-in telephonic hearing on Tuesday, November 20, 2018, at 10:00 a.m. and assigned the case to me.

I issued a Prehearing Order on October 16, 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.

The hearing was held on November 20, 2018 as scheduled. Charles Franklin appeared. Cynthia Franklin did not appear. Attorney Laureto Farinas was present on behalf of the Respondent with a witness. Prior to going on the record, it became clear that Cynthia Franklin filed the instant Formal Complaint for her father's benefit, without his knowledge. Mr. Franklin had only recently become aware of the instant Formal Complaint, and that his presence was required at the hearing. It additionally became clear, given that the Complaint was filed without his knowledge, that Mr. Franklin was not prepared to prosecute the Complaint. After Attorney Farinas and I explained to Mr. Franklin that he could withdraw the Complaint without prejudice, he decided to withdraw the Complaint. It was discussed that withdrawal of the Complaint, without prejudice, would permit Mr. Franklin to file a Complaint if future discussions with his family and PGW did not prove fruitful in restoring his gas service. Mr. Franklin made the request to withdraw the Complaint orally on the record, to which PGW did not object.

The record² closed on November 20, 2018, following the conclusion of the hearing. No witnesses were presented and no exhibits were introduced for the record. For the reasons discussed below, the Complainant's Petition to Withdraw the Complaint will be granted, without prejudice.

FINDINGS OF FACT

1. The Complainants are Charles Franklin and Cynthia Franklin.
2. The Respondent is Philadelphia Gas Works.
3. Cynthia Franklin is the daughter of Charles Franklin.
4. The Complainants filed a Complaint on September 5, 2018.
5. The Respondent filed an Answer on September 26, 2018.
6. Charles Franklin was present at the November 20, 2018 hearing in this matter. Cynthia Franklin was not present.
7. The Complaint was written by Cynthia Franklin, for Charles Franklin's benefit, but without his knowledge.
8. Complainant Charles Franklin made an oral request to withdraw the Complaint without prejudice.
9. The Respondent has no objections to the Complainant's request to withdraw the Complaint.

² The telephonic hearing was recorded over the phone by means of a tape recorder. No Court Reporter was present.

10. The Respondent stated that it will contact Mr. Franklin and his daughter following the hearing to discuss the status of Mr. Franklin's utility service and what can be done to restore service.

11. Mr. Franklin understands that he may file a Complaint with the Commission seeking help to restore his gas service, if discussions with the Respondent do not prove fruitful.

DISCUSSION

The Complainant made an oral request during the hearing held in this matter to withdraw the Complaint. 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).

It must first 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. I will choose to disregard this error in procedure. Section 1.2 of the Commission's regulations allow for a presiding officer to disregard an error or defect of procedure which does not affect the substantive rights of the parties.

- (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(a), (c), (d).

PGW's substantive rights will not be affected by my decision to disregard the error in question as PGW stated that it has no objections to the Complainant's request to withdraw the Complaint. Thus, the Complainant's request to withdraw the Complaint, made orally at the hearing, will be treated as a properly submitted Petition to Withdraw.

As noted, discussions held off the record between the parties and the presiding officer revealed that Charles Franklin, until recently, had no knowledge of the filing of this instant Formal Complaint. The Formal Complaint was filed by his daughter, Cynthia Franklin, for his benefit, with the intent of getting help from the Commission to restore Mr. Franklin's gas service. Cynthia Franklin was not present for the hearing. Mr. Franklin did not want to, nor was he prepared to, go forward with the hearing scheduled for this matter on November 20, 2018. It would have served no purpose to continue with the hearing as scheduled with a Complainant unprepared to prosecute the Complaint, under no fault of his own. Granting the Petition to Withdraw without prejudice will give Mr. Franklin the opportunity to discuss methods to restore his gas service with PGW and with his family. If discussions with PGW prove to be unfruitful in restoring his gas service, then he has the option of filing a Complaint with the Commission. Any future Complaint filed under Mr. Franklin's name should be done with his full knowledge of its existence and its contents.

In conclusion, 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. PGW 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 PGW or the public interest. Mr. Franklin's Petition to Withdraw the Complaint will be granted, without prejudice.

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.

