

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Mark Sanders	:	
	:	
v.	:	C-2018-3003564
	:	
Duquesne Light Company	:	

INITIAL DECISION

Before
Jeffrey A. Watson
Administrative Law Judge

This Initial Decision grants the request to withdraw the formal complaint filed by Complainant.

HISTORY OF THE PROCEEDING

On July 23, 2018, Mark Sanders (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Duquesne Light Company (Duquesne Light, Respondent or Company) alleging, *inter alia*, that Respondent was threatening to shut off his electric service because he refused the installation of a smart meter on his house. Complainant averred that he does not agree to the installation of a smart meter on his home because of safety issues and health concerns, including possible consequences to his son who is sensitive to electromagnetic frequencies. He also averred that smart meters constitute an invasion of privacy, present a fire hazard, are susceptible to hacking, are not installed by certified electricians thereby presenting safety concerns, and create surveillance issues. Complainant also averred “There is no federal security mandate for smartmeters”, and

that threatening to terminate his service because he does not want a smart meter deprives him of his constitutional rights pursuant to the United States and Pennsylvania Constitutions.

As relief, Complainant stated that he does not want a smart meter installed at his property.¹

On August 13, 2018, Respondent filed an Answer and New Matter to the Complaint, admitting that it has sent a termination notice to Complainant's residence but denying that its actions were improper. Respondent further averred that Complainant tampered with the meter installed at the subject property. Respondent essentially denied the remaining material allegations set forth in the Complaint. Respondent further averred it is required by Act 129 of 2008,² to install a smart meter.

On August 13, 2018, Respondent also filed preliminary objections to the Complaint. Respondent essentially averred that to the extent Complainant seeks to opt-out of receiving a smart meter, that portion of his claim is legally insufficient and must be dismissed.

Respondent further averred that Complainant's claim, that Duquesne Light has violated the Pennsylvania and United States Constitutions and the Energy Policy Act of 2005 and other federal law from 2007, must be dismissed because the Commission lacks jurisdiction to resolve such issues.

Respondent requested a dismissal of the portions of the Complaint that seek to opt-out of Respondent's smart meter program and that allege violations of the Pennsylvania and United States Constitutions.

¹ The Formal Complaint dated 7/23/2018 was signed by an unidentified individual and the signature was followed by the words "Attorney in fact for Mark Sanders". The individual who signed the Formal Complaint did not print his or her name or attach a power of attorney to the Formal Complaint.

² 66 Pa.C.S. § 2806.1 *et seq.*

A Motion Judge Assignment Notice was issued on September 17, 2018, and the undersigned presiding officer was assigned to this proceeding.

By interim order issued on October 4, 2018, Respondent's preliminary objections were granted in part and denied in part. The preliminary objections filed by Duquesne Light, to the extent Complainant claimed that Respondent violated his rights under the Pennsylvania and United States Constitutions and the Energy Policy Act of 2005, were granted and those claims were dismissed. The preliminary objections filed by Duquesne Light were denied in all other respects.

On November 9, 2018, an interim order was entered scheduling a prehearing conference for Wednesday, December 12, 2018. Also on November 9, 2018, a Call-In Telephone Pre-Hearing Conference Notice was issued for the December 12, 2018 prehearing conference in this proceeding.

On December 4, 2018, Complainant filed a letter with the Commission stating that he was withdrawing his Complaint because he no longer occupies the premises which is the service location at issue.

The prehearing conference was convened as scheduled on December 12, 2018 at approximately 10:05 a.m. Complainant did not appear. Paul Shane Miller, Esquire, appeared on behalf of Respondent. Attorney Miller advised that he did not receive a copy of the letter from Complainant dated December 4, 2018; however, he represented that Respondent had no objection to the request to withdraw the complaint.

The record closed upon the issuance of an interim order on December 13, 2018.

FINDINGS OF FACT

1. Complainant is Mark Sanders.
2. Respondent is Duquesne Light Company.
3. On July 23, 2018, Complainant filed a Complaint against Respondent.
4. On December 4, 2018, Complainant filed a letter with the Commission stating that he was withdrawing his Complaint because he no longer occupies the premises which is the service location at issue.
5. The letter from Complainant dated December 4, 2018 did not include a certificate of service and did not indicate that a copy was provided to Respondent.
6. On December 12, 2018, a prehearing conference was conducted and counsel for Respondent represented that Respondent had no objection to Complainant's request to withdraw his formal complaint.
7. The record closed upon the issuance of an interim order on December 13, 2018.

DISCUSSION

Complainant filed a Complaint dated July 23, 2018, against Duquesne Light Company alleging, *inter alia*, that Respondent was threatening to shut off his electric service because he refused the installation of a smart meter on his house. Complainant averred that he does not agree to the installation of a smart meter on his home because of safety issues and health concerns, including possible consequences to his son who is sensitive to electromagnetic frequencies. He also averred that smart meters constitute an invasion of privacy, present a fire hazard, are susceptible to hacking, are not installed by certified electricians thereby presenting

safety concerns, and create surveillance issues. Complainant also averred there is no federal security mandate for smart meters, and that threatening to terminate his service because he does not want a smart meter deprives him of his constitutional rights under the Pennsylvania and United States Constitutions.

As relief, Complainant stated that he does not want a smart meter installed at his property.

On August 13, 2018, Respondent filed an Answer and New Matter to the Complaint, admitting that it has sent a termination notice to Complainant's residence but denying that its actions were improper. Respondent further averred that Complainant tampered with the meter installed at the subject property. Respondent essentially denied the remaining material allegations set forth in the Complaint. Respondent further averred it is required by Act 129 of 2008,³ to install a smart meter.

On August 13, 2018, Respondent also filed preliminary objections to the Complaint. Respondent essentially averred, that to the extent Complainant seeks to opt-out of receiving a smart meter, that portion of his claim is legally insufficient and must be dismissed.

Respondent further averred that Complainant's claim, that Duquesne Light has violated the Pennsylvania and United States Constitutions and the Energy Policy Act of 2005 and other federal law from 2007, must be dismissed because the Commission lacks jurisdiction to resolve such issues.

Respondent requested a dismissal of the portions of the Complaint that seek to opt-out of Respondent's smart meter program and that allege violations of the Pennsylvania and United States Constitutions.

³ 66 Pa.C.S. § 2806.1 *et seq.*

By interim order issued on October 4, 2018, Respondent's preliminary objections were granted in part and denied in part. The preliminary objections filed by Duquesne Light, to the extent Complainant claimed that Respondent violated his rights under the Pennsylvania and United States Constitutions and the Energy Policy Act of 2005, were granted and those claims were dismissed. The preliminary objections filed by Duquesne Light were denied in all other respects.

On December 4, 2018, Complainant filed a letter with the Commission stating that he was withdrawing his Complaint because he no longer occupies the premises which is the service location at issue. At the prehearing conference on December 12, 2018, Counsel for Respondent represented that Respondent had no objection to the request to withdraw the complaint.

Section 5.94 of the Commission's regulations, entitled "Withdrawal of pleadings in a contested proceeding", provides in relevant part 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).

Although Complainant's letter requesting permission to withdraw the Complaint does not technically conform to the requirements of 52 Pa.Code § 5.94(a) as it was not in the form of a petition, and was not served upon Respondent, waiver of these requirements is permitted. Under Section 1.2, 52 Pa.Code § 1.2, a presiding officer at any stage of an action or proceeding may waive a requirement of a rule when necessary or appropriate, if waiver does not adversely affect a substantive right of a party. Such are the circumstances in this case. The Complainant's letter dated December 4, 2018, requesting permission to withdraw the Complaint

will be treated as a petition and will be granted as continuing the litigation, under the circumstances, is not in the public interest.

It is appropriate to permit Complainant to withdraw his complaint, under the circumstances. Complainant was provided with an opportunity to be heard and to present his case but elected to withdraw his complaint. In his letter dated December 4, 2018, Complainant clearly states his intent to withdraw his Complaint because he no longer occupies the premises which is the service location at issue. At the prehearing conference on December 12, 2018, Counsel for Respondent represented that Respondent had no objection to the request to withdraw the complaint.

CONCLUSIONS OF LAW

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

2. Complainant as the proponent of a rule or order has the burden of proof. 66 Pa.C.S. § 332(a).

3. When a party desires to withdraw a pleading in a contested proceeding, a party 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.

4. A presiding officer at any stage of an action or proceeding may waive a requirement of a rule when necessary or appropriate, if waiver does not adversely affect a substantive right of a party. 52 Pa.Code § 1.2.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the request of Complainant, Mark Sanders, to withdraw his Complaint filed against Duquesne Light Company at Docket No. C-2018-3003564, is granted.

2. That the Secretary's Bureau shall mark Docket No. C-2018-3003564 closed.

Date: December 13, 2018

/s/
Jeffrey A. Watson
Administrative Law Judge