

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jeffrey Frederick	:	
	:	
v.	:	C-2018-3002631
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Angela T. Jones
Administrative Law Judge

INTRODUCTION

In this proceeding, Jeffrey Frederick (Complainant) filed a formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (PUC or Commission) against Philadelphia Gas Works (PGW or Company or Respondent). The Complainant determined it was appropriate to request a withdrawal of his Complaint with the Commission. This decision grants the withdrawal of the Complaint requested by the Complainant.

HISTORY OF THE PROCEEDING

On June 11, 2018, the Complainant filed a Complaint against the Respondent. The Complainant disputed the Respondent's charges for gas service to two newly constructed homes. The Complainant questioned whether the Respondent's charges calculated from the Company's tariff were reasonable.

The Complaint was served on the Respondent electronically by the Commission's Secretary on June 11, 2018.¹

On July 2, 2018, the Respondent filed its Answer to the Complaint. In its Answer, the Respondent admitted that there is a charge for gas service to the newly constructed homes at issue in the Complaint. The Respondent denied all other material allegations of the Complaint and further contended that its charges complied with the rules governing extended service under its tariff. The Respondent requested that the Commission find against the Complainant and dismiss the Complaint.

A Hearing Notice was issued on July 10, 2018, in this proceeding scheduling an initial in-person hearing on Wednesday, September 12, 2018. The Hearing Notice assigned the Complaint to the undersigned Administrative Law Judge (ALJ).

A Prehearing Order dated July 16, 2018, was sent to the parties providing the procedural rules to the proceeding. The Prehearing Order confirmed the scheduled in-person hearing for Wednesday, September 12, 2018.

The in-person initial hearing convened as scheduled. Laureto Farinas, Esquire, was present on behalf of the Respondent. Attorney Farinas was accompanied by two potential witnesses. The Complainant failed to appear at the initial hearing. Attorney Farinas moved to dismiss the Complaint for lack of prosecution. The undersigned stated she would consider the motion and rule on the motion in writing. The hearing was then adjourned.

By letter dated September 14, 2018, the Complainant stated he had to address an emergency on September 12, 2018, which caused him to miss the scheduled in-person hearing. The Complainant requested that his in-person hearing be rescheduled.

¹ PGW 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 June 11, 2018.

The Respondent objected to the request to reschedule the in-person hearing because the rationale alleged for the Complainant's absence was not supported. The Respondent also alleged that the Complainant is acting on behalf of a limited liability corporation, Mont Alto, LLC.

By Order dated October 1, 2018, the Respondent's objection was overruled and the Complainant's request to reschedule the in-person hearing was granted.

By Hearing Notice dated October 2, 2018, a further hearing was scheduled for December 18, 2018.

By facsimile dated December 18, 2018, the Complainant stated he desired to withdraw from the scheduled hearing. There was no indication that the faxed document was sent to the Respondent. The undersigned sent a copy of the faxed document to Attorney Farinas. Mr. Farinas stated that the Company did not object to the withdrawal requested by the Complainant.

The scheduled hearing was cancelled based on the uncontested withdrawal requested by the Complainant. The record closed upon receiving the Respondent's response to the withdraw requested by the Complainant on December 18, 2018. This matter is ripe for decision.

DISCUSSION

This matter is a contested proceeding to determine whether the Respondent has charged for extensions of piping for gas service in compliance with its filed and Commission-approved tariff.

The Complainant has requested that the Complaint be withdrawn stating, "I...must withdrawal [sic] from the hearing scheduled for this morning at 10 am due to the fact that my council [sic] is unable to attend." December 18, 2018, Complainant Letter.

52 Pa.Code § 1.2(a) and (c) state,

(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.

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 undersigned finds that the Complainant's letter dated December 18, 2018 is a pleading that in substance conforms to a Petition for Leave to Withdraw his Complaint. The undersigned finds that the substance of the letter overrides any defect in the appropriate form of the pleading pursuant to 52 Pa.Code § 1.2(a).

It is noted that the Complainant performed this action under his 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, Mr. Frederick and PGW, to cease any further consideration of the Complaint if the matter is moot or is not viable or no longer in need of pursuit by the Complainant. For these reasons, I find that the Complainant's request to withdraw his Complaint 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. The Petition for Leave to Withdraw from the Complainant dated December 18, 2018, is reasonable and is in the public interest.

ORDER

THEREFORE,

IT IS ORDERED;

1. That the Petition for Leave to Withdraw from Jeffrey Frederick dated December 18, 2018, regarding the formal Complaint of Jeffrey Frederick against Philadelphia Gas Works at Docket No. C-2018-3002631 is granted.
2. The formal Complaint filed by Jeffrey Frederick against Philadelphia Gas Works at Docket No. C-2018-3002631 is withdrawn.
3. That the Secretary's Bureau is to mark this matter closed.

Date: January 18, 2019

_____/s/_____
Angela T. Jones
Administrative Law Judge