

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Ann Luyando	:	
	:	
v.	:	F-2018-3004173
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Angela T. Jones
Administrative Law Judge

INTRODUCTION

In this proceeding, Ann Luyando (Complainant) filed a formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (PUC or Commission) against PECO Energy Company (PECO or Company or Respondent). The Complainant determined it was appropriate to withdraw her Complaint. This decision grants the withdraw requested by the Complainant.

HISTORY OF THE PROCEEDING

On August 3, 2018, the Complainant filed a Complaint against the Respondent. The Complainant alleged that she sought financial assistance and information about the Respondent's customer assistance program (CAP). The Complainant disputed that she agreed to a payment arrangement with the Respondent. The Complainant requested that she be approved to participate in the Respondent's CAP program.

The Complaint was served on the Respondent electronically by the Commission's Secretary on August 21, 2018.¹

On August 30, 2018, the Respondent filed its Answer to the Complaint. In its Answer, the Respondent denied all material allegations of the Complaint. The Respondent stated it received an application for CAP from the Complainant on June 27, 2018 and determined that the Complainant was over the income requirement for CAP eligibility. The Respondent requested that the Commission dismiss the Complaint.

A Hearing Notice was issued on September 4, 2018, in this proceeding scheduling an initial in-person hearing on Thursday, October 25, 2018. The hearing was scheduled with other formal complaints scheduled on the same date and time in "call-of-the-docket" style. The Hearing Notice assigned the Complaint to the undersigned Administrative Law Judge (ALJ).

A Prehearing Order dated September 4, 2018, was sent to the parties providing the procedural rules to the proceeding. The Prehearing Order confirmed the scheduled in-person hearing for Thursday, October 25, 2018.

The Complainant requested a telephonic hearing due to her disability. By Hearing Notice dated September 11, 2018, the October 25, 2018 hearing was canceled and rescheduled to Monday, October 22, 2018.

A Corrected Prehearing Order² dated September 17, 2018, confirmed the rescheduled telephonic hearing for Monday, October 22, 2018.

¹ PECO 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 August 21, 2018.

² The Prehearing Order was corrected because the Complainant requested a hearing in the afternoon because of her disability and the Prehearing Order had the correct date but incorrectly referred to a morning hearing.

The telephonic hearing convened as scheduled. The Complainant was present and represented herself. The Complainant testified and sponsored 17 exhibits. The following ten exhibits were admitted into the record:

1. Complainant Exhibit 1A – Shut off Notice;
2. Complainant Exhibit 1B – 5/16/18 Billing Summary;
3. Complainant Exhibit 1C – Check;
4. Complainant Exhibit 2A – 7/17/18 Billing Summary;
5. Complainant Exhibit 2B – 7/24/18 Billing Summary;
6. Complainant Exhibit 2C – 8/15/18 Billing Summary;
7. Complainant Exhibit 3A – CAP Disqualification Letter;
8. Complainant Exhibit 3B – CAP No Income Form;
9. Complainant Exhibit 3C – Informal Complaint Decision; and
10. Complainant Exhibit 4 – Complainant’s Social Security Income.

The remaining seven exhibits were objected to and were not admitted into the record. The Respondent was present and presented one witness, Michael Begley. The Respondent sponsored eight exhibits, but only the following five exhibits were admitted into the record:

1. PECO Exhibit 1 – Account Balance;
2. PECO Exhibit 3 – CAP Application;
3. PECO Exhibit 4 – CAP Tariff;
4. PECO Exhibit 5 – Complainant’s Financial History; and
5. PECO Exhibit 7 – BCS Informal Complaint Report.

During the telephonic hearing, the undersigned decided that the Respondent’s Exhibit 2 should provide complete contact information rather than contacts selected by the Respondent. The undersigned directed that PECO present the exhibit as late-filed and a further hearing would be scheduled to examine the exhibit prior to its admission into the record. Similarly, the undersigned directed the Complainant to late-file her exhibits that were not provided prior to the scheduled telephonic hearing for review by the Respondent. At the further hearing, those exhibits would be examined prior to any admission into the record. A Prehearing Order dated October 23, 2018, identified the exhibits that the parties desired to be late-filed. The Prehearing Order also stated that the further telephonic hearing was scheduled for December 20, 2018.

The transcript for the initial telephonic hearing generated 85 pages of transcribed testimony. The transcript was received by the undersigned on November 26, 2018.

By Hearing Notice dated October 24, 2018, this proceeding was scheduled for a further telephonic hearing for Thursday, December 20, 2018.

Sent by electronic mail (email) on December 20, 2018, the Complainant stated in a letter dated December 19, 2018, that the issues she raised in her Complaint were satisfied by the Respondent. The Complainant therefore requested that her Complaint be withdrawn. The email was forwarded to the Respondent's counsel, Shawane L. Lee, Esquire. Attorney Lee responded that PECO had no objection to the Complainant's request.

This matter is ripe for decision.

DISCUSSION

This matter is a contested proceeding to determine whether the Respondent has incorrectly charged the Complainant or unreasonably denied the Complainant as a CAP recipient or otherwise violated Commission rules, regulations, statutes, or precedent in providing electric and gas service to the Complainant.

The Complainant stated that her Complaint has been satisfied by the Respondent. The Complainant confirmed that she wished to withdraw her Complaint. Complainant's Letter dated December 19, 2018.

52 Pa.Code §§ 1.2(a), (c) and (d) 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.

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

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 request, although not written as a Petition for Leave to Withdraw, should be liberally construed in compliance with 52 Pa.Code § 1.2(a). Furthermore, the substance of the actions of the Complainant overrides any defect in the appropriate form of a pleading pursuant to 52 Pa.Code § 1.2(a). Furthermore, the Complainant is representing herself in this proceeding. 52 Pa.Code § 1.2(d) affords liberal construction of the Commission's regulations in proceedings where a Complainant appears pro se.

It is noted that the Complainant performed this action under her own discretion. It is compelling that the Respondent does not object to the withdrawal requested by the Complainant.

It curtails the costs of the Commission and the parties, Ms. Luyando and PECO, 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 her 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 request by the Complainant for Leave to Withdraw the Complaint is reasonable and is in the public interest.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Petition for Leave to Withdraw from Ann Luyando received on December 20, 2018, regarding the formal Complaint of Ann Luyando against PECO Energy Company at Docket No. F-2018-3004173 is granted.
2. That the formal Complaint filed by Ann Luyando against PECO Energy Company at Docket No. F-2018-3004173 is withdrawn.
3. That the Secretary's Bureau is to mark this matter closed.

Date: January 28, 2019

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

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ANN MARIE LUYANDO
4 MAGNOLIA DRIVE
NEWTOWN PA 18940
267.756.0500

SHAWANE L LEE ESQUIRE
EXELON BUSINESS SERVICES
LEGAL DEPT S23-1
2301 MARKET STREET
PHILADELPHIA PA 19101
215.841.6841
Accepts E-Service