

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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|---------------------|---|----------------|
| Linda Higgins | : | |
| | : | |
| v. | : | F-2018-3006369 |
| | : | |
| PECO Energy Company | : | |

INITIAL DECISION

Before
Gail M. Chiodo
Special Agent

INTRODUCTION

This decision grants a customer’s request to withdraw her formal complaint because there is no objection to the request and the withdrawal is in the public interest.

HISTORY OF THE PROCEEDING

On December 5, 2018, Linda Higgins (Complainant) filed a formal complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO or Respondent). In her Complaint, Ms. Higgins alleged that the utility is threatening to shut off her service or has already shut off her service, that there are incorrect charges on her bill, and that she would like a payment arrangement. The Complaint is a timely appeal from a decision of the Commission’s Bureau of Consumer Services (BCS) at BCS Case No. 3601920 dated October 19, 2018, which dismissed Ms. Higgins’ informal complaint.

On December 12, 2018, PECO filed an answer denying all material allegations in the Complaint. Further, PECO averred that Complainant's entire balance is comprised of customer assistance program (CAP) arrears and that Ms. Higgins is currently enrolled in PECO's CAP-Fixed Credit Option. PECO also denied that Complainant's bills are incorrect, stating that her bills are based on actual meter readings. PECO requested that the Complaint be dismissed.

On December 17, 2018, a telephonic hearing notice was issued by the Commission setting an initial telephonic hearing for this matter for February 5, 2019. The case was assigned to me pursuant to 52 Pa. Code § 56.174.¹ A prehearing order dated January 2, 2019 was issued to the parties which again advised them of the date and time of the scheduled hearing and informed them of the various procedures applicable to this proceeding.

The hearing convened as scheduled on February 5, 2019. Ms. Higgins appeared *pro se* and Shawane Lee, Esquire, appeared as counsel for PECO. No testimony was taken and no exhibits were offered for the record.

Prior to the start of the hearing, Ms. Higgins stated that she wanted to withdraw her Complaint. Complainant explained that she understood that the Commission is precluded from awarding a payment arrangement on CAP arrears and that her entire balance is comprised of CAP arrears. Further, Ms. Higgins stated that she is expecting to receive a settlement check sometime in April of 2019 in an unrelated matter, and that she intended to use a portion of this settlement check to pay down her balance on her account with PECO. Complainant also stated that she no longer wished to pursue her claim that her bills are incorrect. Respondent did not object to Complainant's withdrawal request.

After Ms. Higgins placed her request to withdraw her Complaint and her reasons for her request on the record, with no objection, the record closed. For the reasons discussed

¹ 52 Pa. Code § 56.174 provides for review by a special agent of decisions of the BCS and any other case in which the issue is solely the ability to pay.

below, the Complainant's request to withdraw her Complaint will be granted and the Complaint will be withdrawn.

FINDINGS OF FACT

1. The Complainant is Linda Higgins.
2. The Respondent is PECO Energy Company.
3. On December 5, 2018, Ms. Higgins filed a formal complaint against Respondent.
4. The Complaint is a timely appeal from a decision of the Commission's Bureau of Consumer Services (BCS) at BCS Case No. 3601920 dated October 19, 2018, which dismissed Complainant's informal complaint.
5. On December 17, 2018, a telephonic hearing notice was issued setting an initial telephonic hearing for this matter for February 5, 2019.
6. The initial telephonic hearing convened as scheduled on February 5, 2019.
7. Prior to the start of the hearing, Ms. Higgins stated that she wanted to withdraw her Complaint because she understood that the Commission is precluded from awarding a payment arrangement on CAP arrears and that her entire balance is comprised of CAP arrears.
8. Ms. Higgins also stated that she wanted to withdraw her Complaint because she is expecting to receive a settlement check sometime in April of 2019 in an unrelated matter, and that she intended to use a portion of this settlement check to pay down her balance on her account with PECO.

9. Ms. Higgins also stated that she no longer wished to pursue her claim that her bills are incorrect.

10. Counsel for PECO stated that PECO had no objection to Complainant's request to withdraw her Complaint.

DISCUSSION

The Commission's Rules of Practice and Procedure at 52 Pa. Code § 5.94(a) provide that 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. 52 Pa. Code § 5.94(a). This section further provides that the petition must set forth the reasons for the withdrawal and that a party may object to the petition within 10 days. *Id.* Finally, this section provides that, after considering the petition, any objection thereto and the public interest, the presiding officer or the Commission will determine whether the withdrawal will be permitted. *Id.*

When the initial telephonic hearing convened on February 5, 2019, Ms. Higgins stated that she wanted to withdraw her Complaint. Ms. Higgins explained that she understood that the Commission is precluded from awarding a payment arrangement on CAP arrears and that her entire balance is comprised of CAP arrears.² Further, Ms. Higgins explained that she was expecting a settlement check sometime in April of 2019 in an unrelated matter, and that she intended to use a portion of this settlement check to pay down her balance on her account with PECO. Complainant also stated that she did not want to pursue her claim that her bills are incorrect.

The Commission's regulations contemplate that a party requesting leave to withdraw a pleading should do so in writing. 52 Pa. Code § 5.94(a). Here, Ms. Higgins made her request orally at the hearing on the record. The regulation at 52 Pa. Code § 1.2(a) provides

² At the time of her request to withdraw her Complaint, Ms. Higgins acknowledged that her outstanding balance at the time of the hearing was over \$8,000.

that the presiding officer or Commission may disregard an error or defect of procedure which does not affect the substantive rights of the parties; therefore, I will treat the verbal on-the-record request as if it had been made in writing. I will consider the verbal request to withdraw the Complaint as a petition to withdraw pursuant to 52 Pa. Code § 5.94 in order to secure a just, speedy and inexpensive determination of this proceeding. *See*, 52 Pa. Code § 1.2(a) (providing for a liberal construction of the Commission’s administrative rules to secure the just, speedy and inexpensive determination of a proceeding). Granting the withdrawal will not adversely affect either party's substantive rights since PECO did not object to the verbal form of the request. *See*, *Jakubik v. PECO Energy Co*, Docket No. C-2014-2453043 (Final Order entered May 22, 2015), which also treated a complainant’s verbal on-the-record request to withdraw a complaint as a petition to withdraw.

Ms. Higgins presented sufficient reasons why her Complaint should be withdrawn, including her desire to maintain her service by resolving her outstanding arrearage with Respondent by applying a portion of a settlement check she expects to receive in the near future in an unrelated matter. Further, Ms. Higgins stated that she understood that the Commission is precluded from awarding a payment arrangement on CAP arrears and that her entire balance is comprised of CAP arrears.³ Finally, Ms. Higgins stated that she no longer wished to pursue her claim that her bills are incorrect.

The Commission has no interest in mandating that a customer continue litigation when the customer indicates no interest in prosecuting the complaint. Further, granting the Complainant's request is in the public interest because doing so will eliminate the need for litigation and save the parties any additional costs in time and money that they would otherwise incur litigating the case. *Bayala v. Philadelphia Gas Works*, Docket No. F-2017-2624911 (Final Order entered April 19, 2018). There are no other parties to this proceeding and Ms. Higgins’s Complaint does not impact other PECO customers or the public interest. Finally, there is no objection to the request to withdraw.

³ *See* 66 Pa.C.S. § 1405(c) which provides that, “Customer assistance program rates shall be timely paid and shall not be the subject of payment arrangements negotiated or approved by the commission.”

Therefore, Ms. Higgins's request to withdraw her Complaint will 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. 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. 52 Pa. Code § 5.94(a).

3. A petition to withdraw a pleading in a contested proceeding must set forth the reasons for the withdrawal and that a party may object to the petition within 10 days. 52 Pa. Code § 5.94(a).

4. The presiding officer or Commission may disregard an error or defect of procedure which does not affect the substantive rights of the parties. 52 Pa. Code § 1.2(a).

5. Complainant's oral on-the-record request to withdraw her Complaint, along with her stating her reasons for the request, do not affect the substantive rights of the parties and may be treated as a petition to withdraw as if it had been made in writing. *Jakubik v. PECO Energy Co.*, Docket No. C-2014-2453043 (Final Order entered May 22, 2015).

6. After considering a petition to withdraw a pleading in a contested proceeding, any 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).

7. It is in the public interest to allow Ms. Higgins to withdraw her Complaint.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the verbal on-the-record request of Linda Higgins on February 5, 2019 to withdraw her Formal Complaint against PECO Energy Company at Docket Number F-2018-3006369 is granted.
2. That the Formal Complaint filed by Linda Higgins against PECO Energy Company at Docket Number F-2018-3006369 is hereby withdrawn without prejudice.
3. That this matter be marked closed.

Date: March 5, 2019

/s/
Gail M. Chiodo
Special Agent