

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Robert Lavelle	:	
	:	
v.	:	C-2018-3005945
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Alphonso Arnold III
Special Agent

INTRODUCTION

This Initial Decision grants the Complainant’s Petition to Withdraw the Complaint.

HISTORY OF THE PROCEEDING

On November 8, 2018, Robert Lavelle (Complainant or Mr. Lavelle) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (Respondent or PGW) wherein he requested a new payment arrangement due to serious illness and hospitalization.

On December 3, 2018, the Respondent filed an Answer to the Complaint. The Respondent alleged that the Complainant exhausted all of his medical certificates associated with his gas account, and that a new payment arrangement is not warranted due to the Complainant’s lack of good faith in paying his PGW gas bills.

By Hearing Notice issued December 10, 2018, the Commission scheduled this matter for a telephonic hearing on January 23, 2019, at 10:00 a.m.

I issued a Prehearing Order on December 13, 2018, addressing, inter alia, the procedures applicable to the hearing and the method by which a party could request a continuance if the hearing date was not convenient for them.

The hearing was held on January 23, 2019 as scheduled. Mr. Lavelle was present for the hearing. Attorney Laureto Farinas appeared on behalf of PGW with a witness. Prior to going on the record for the hearing, discussions were held between the parties and myself. PGW extended a payment arrangement to Mr. Lavelle, contingent upon Mr. Lavelle submitting certain documentation to PGW. On the hearing record, Mr. Lavelle made a request to continue the hearing so that he could submit said documentation to PGW and myself. PGW did not object to the continuance request, and the continuance request was granted by Order issued January 24, 2019.

By Hearing Notice issued January 24, 2019, the Commission scheduled this matter for a further telephonic hearing on March 6, 2019.

The further hearing was held on March 6, 2019 as scheduled. Mr. Lavelle was present for the hearing. Attorney Laureto Farinas appeared on behalf of PGW with a witness. Mr. Lavelle failed to submit the beforementioned documentation to PGW and myself prior to the scheduled further hearing date. Prior to going on the record for the hearing, discussions were held between the parties and myself. The payment arrangement that was extended to Mr. Lavelle at the initial hearing was extended to Mr. Lavelle at the further hearing. Mr. Lavelle informed the presiding officer that he intended to submit the requested documentation to PGW, and that he would withdraw his present Complaint against PGW. Mr. Lavelle made his request to withdraw his Complaint on the hearing record, and PGW did not object to the withdrawal request.

The record¹ closed on March 6, 2019, following the conclusion of the further hearing. No witnesses were presented and no exhibits were introduced for the record. The Complainant's Petition to Withdraw the Complaint will be granted, without prejudice.

FINDINGS OF FACT

1. The Complainant is Robert Lavelle.
2. The Respondent is Philadelphia Gas Works.
3. The Complainant filed a Complaint on November 8, 2018.
4. The Respondent filed an Answer on December 3, 2018.
5. The Complainant made an oral request at the further hearing to withdraw his Complaint.
6. The Respondent had no objection to the Complainant's request to withdraw his Complaint.

DISCUSSION

The Complainant made an oral request during the further hearing held in this matter to withdraw his 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:

§ 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

¹ The telephonic hearings on January 23, 2019 and March 6, 2019 were both recorded over the phone by means of a tape recorder. No Court Reporter was present for either hearing.

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 disregard this error in procedure. Section 1.2 of the Commission's regulations allows for a presiding officer to disregard an error or defect of procedure which does not affect the substantive rights of the parties.

§ 1.2. Liberal construction.

(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), and (d).

PGW's substantive rights will not be affected by my decision to disregard the error in question, as evidenced by the fact that PGW did not object to the withdrawal request. Thus, the Complainant's request to withdraw the Complaint, made orally at the hearing, will be treated as a properly submitted Petition to Withdraw the Complaint.

PGW extended a payment arrangement to Mr. Lavelle, contingent upon Mr. Lavelle submitting to PGW certain documentation. Concluding that submitting the requested documentation to enter into a company payment arrangement was the best way to resolve his Complaint, Mr. Lavelle indicated that he would submit said documentation and withdraw his Complaint. PGW made no objection to the Petition. Thus, as the issues raised in the Complaint have been resolved, it would serve no purpose moving forward with the litigation of this case. Furthermore, 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. The Complainant's Petition to Withdraw the Complaint will be granted in the ordering paragraphs below.

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.

ORDER

THEREFORE,

IT IS ORDERED:

1. That Robert Lavelle's Petition to Withdraw the Complaint in the matter of Robert Lavelle v. Philadelphia Gas Works, Docket No. C-2018-3005945, is granted.

2. That the Complaint at Docket Number C-2018-3005945 is hereby withdrawn without prejudice.

3. That the docket at Docket No. C-2018-3005945 be marked closed.

Date: March 6, 2019

/s/
Alphonso Arnold III
Special Agent