

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Corey Smith	:	
	:	
v.	:	C-2018-3005993
	:	
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 5, 2018, Corey Smith (Complainant or Mr. Smith) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (Respondent or PGW) wherein he indicated that PGW was threatening to terminate his service and requested a payment arrangement.

On December 4, 2018, the Respondent filed an Answer to the Complaint. The Respondent admitted or denied the various allegations of fact in the Complaint and requested that the Commission dismiss and deny the Complaint.

By Hearing Notice issued December 12, 2018, the Commission scheduled this matter for a telephonic hearing on January 31, 2019, at 10:00 a.m.

I issued a Prehearing Order on December 17, 2018, addressing, inter alia, the procedures applicable to the hearing.

The Hearing Notice issued to the Complainant was returned to the Commission as being undeliverable by the postal authorities. On the returned envelope, a new address was provided for the Complainant. As a result, a Hearing Cancellation/Reschedule Notice was issued on January 25, 2019 to the new address for the Complainant rescheduling the telephonic hearing for March 8, 2019. The Prehearing Order was reissued to the new address as well.

The hearing was held on March 8, 2019 as scheduled. Mr. Smith was present for the hearing. Attorney Graciela Christlieb was present for the hearing on behalf of PGW with a witness. During Mr. Smith's testimony, Mr. Smith testified that he was no longer a customer of PGW, nor was he an applicant for service with PGW, and that there was no relief that he was seeking from the Commission. Therefore, Mr. Smith made a request to withdraw his Complaint, to which PGW did not object.

The record<sup>1</sup> closed on March 8, 2019, following the conclusion of the telephonic 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 Corey Smith.
2. The Respondent is Philadelphia Gas Works.

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<sup>1</sup> The telephonic hearing was recorded over the phone by means of a tape recorder. No Court Reporter was present.

3. The Complainant filed a Complaint on November 5, 2018.
4. The Respondent filed an Answer on December 4, 2018.
5. The Complainant made an oral request at the hearing to withdraw his Complaint.
6. The Complainant is neither a customer nor an applicant of PGW, and seeks no relief from the Commission.
7. The Respondent had no objection to the Complainant's request to withdraw his Complaint.

#### DISCUSSION

The Complainant made an oral request during the 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 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.

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(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.

As noted, when ruling on a Petition to Withdraw, objections thereto and the public interest must be considered. PGW made no objection to the Petition. 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. Furthermore, Mr. Smith testified during the hearing that he was no longer a customer of PGW, nor was he applying for service with PGW, and that he no longer was seeking any relief from the Commission. Thus, it would serve no purpose moving forward with the litigation of this case when the Commission cannot provide Mr. Smith with any type of relief. 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 Corey Smith's Petition to Withdraw the Complaint in the matter of Corey Smith v. Philadelphia Gas Works, Docket No. C-2018-3005993, is granted.

