

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

|                                    |   |                |
|------------------------------------|---|----------------|
| Brookfield Development Corporation | : |                |
|                                    | : |                |
| v.                                 | : | C-2016-2539396 |
|                                    | : |                |
| City of Lancaster                  | : |                |

**INITIAL DECISION**

Before  
Marta Guhl  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision grants the Complainant’s request to withdraw its formal Complaint because it is unopposed and in the public interest.

**HISTORY OF THE PROCEEDING**

On April 11, 2016, the Brookfield Development Corporation (“Brookfield” or the “Complainant”), through its counsel, filed a formal complaint with the Pennsylvania Public Utility Commission (“Commission”) against the City of Lancaster (“City” or the “Respondent”). The Complainant alleged that the City is a public utility that provides water service to multiple municipalities outside of the City, including East Lampeter Township in Lancaster County, PA. The Brookfield property is in East Lampeter Township in Lancaster County, Pa., which is in the City’s service territory. The Complainant applied to the Respondent for water service for the Brookfield property. The Complainant alleged that the Respondent violated Section 1501 of the Public Utility Code, 66 Pa.C.S. § 1501, because the City has failed to provide adequate, efficient and reasonable service to the public, including the Complainant. The Complainant alleged that

the City refused to pay to construct and maintain its own water service facilities. The Complainant alleged that the Respondent charged the Complainant the cost of upgrading the Respondent's inadequate water service facilities. The Complainant alleged that Section 23 of the Respondent's tariff is inconsistent with Section 1501 of the Public Utility Code because it requires customers to pay for the entire cost of any water main extensions subject only to a credit for the annual line revenue that the City will receive from the water main extension. The Complainant maintains that Section 4.2 of the Respondent's tariff requires the City to furnish and install service for applicants at the City's expense.

Accordingly, the Complainant alleged that the Respondent violated its tariff by (1) failing to charge all customers for the extension of service to their properties at the same rate and based on the same "formula" in Section 23 of the tariff and (2) by demanding that the Complainant pay for the installation of the water main extensions and water service facilities modifications to serve their properties. The Complainant further alleged that the Respondent violated Section 1501 of the Public Utility Code and abused its monopoly power by charging exorbitant prices for the extension of water service facilities and failing to disclose to the Complainant all of the facts and circumstances surrounding the upgrade of the City's water service facilities and requiring the Complainant to pay for system upgrades that were the City's responsibility.

The Complainant requested that the Commission order the Respondent to complete the work to construct the required facilities and upgrade the City's existing facilities to a satisfactory level capable of providing adequate water service to the public. The Complainant also requested that the Commission order the City complete the work without requiring the Complainant to pay the cost to construct or modify the City's water facilities. In addition, the Complainant has requested that it be reimbursed reasonable attorney's fees.

On May 2, 2016, the Respondent, through its counsel, filed an answer and new matter. In the answer, the Respondent denied the material allegations in the complaint. The Respondent admitted sending correspondence containing conditional approvals of the Complainant's capacity request. In the new matter, the Respondent stated, among other things,

that the complaint does not establish a cause of action for violation of the Public Utility Code or any Commission regulation or order. The Respondent averred that it is in compliance with Section 1501 of the Public Utility Code, all applicable Commission regulations relating to water service and its Commission-approved tariff. The Respondent maintained that it did not offer unconditional approval of the Complainant's water capacity requests. The Respondent requested that the claims in the complaint be dismissed with prejudice.

On May 20, 2016, the Complainant, through its counsel, filed an answer to the new matter. The Complainant denied the allegations in the new matter and requested that the Commission deny and dismiss the Respondent's new matter and grant the relief requested by the Complainant.

By hearing notice, dated July 6, 2016, the hearing was scheduled for August 18, 2016, and the case was assigned to the Administrative Law Judge Cynthia Fordham.

A prehearing order was sent to the parties on July 12, 2016.

By electronic mail, on July 11, 2016, counsel for the City asked for the hearing to be converted to a telephonic prehearing conference. By Prehearing Order #2, Judge Fordham granted the request and converted the August 18, 2016 hearing to a prehearing conference.

By noon on August 17, 2016, counsel for the parties submitted prehearing memoranda addressing the agenda items.

The telephonic prehearing conference was held on August 18, 2016, at 10:00 a.m. Marc B. Kaplin, Esquire, Gregg Adelman, Esquire, and Craig Robert Lewis, Esquire, represented Brookfield Development Corporation and John J. Gallagher, Esquire, represented the City of Lancaster.

On August 25, 2016, Judge Fordham issued Prehearing Order #3 which established a litigation schedule for the case.

Via Hearing Notice dated August 26, 2016, an initial hearing was scheduled for Friday, October 28, 2016 at 10:00 a.m.

On October 24, 2016, counsel for the City of Lancaster requested that the scheduled hearings be cancelled to allow the parties to continue settlement negotiations. Brookfield joined in the continuance request. Judge Fordham granted the continuance request via Prehearing Order #4 dated October 24, 2016.

On March 16, 2017, the Harrisburg Scheduling Office issued a Hearing Notice which scheduled a further hearing in the case on Thursday, April 6, 2017, at 10:00 a.m. and reassigned the matter to me.

On March 30, 2017, counsel for Brookfield filed a continuance request which indicated that the parties needed more time for settlement discussions. The April 6, 2017 hearing was cancelled for further settlement discussions and a Cancellation Notice was sent out on April 4, 2017.

Via Hearing Notice dated April 6, 2017, a further hearing was scheduled for July 10, 2017 at 10:00 a.m.

On July 5, 2017, counsel for Brookfield contacted me via letter and requested that the hearing on July 10, 2017 be cancelled for further settlement discussions and rescheduled for November 2017.

On July 10, 2017, a Cancellation/Reschedule Notice was issued, and the hearing was cancelled for that date and rescheduled for November 16, 2017. On July 11, 2017, I issued an Interim Order which granted Brookfield's request so that the parties could continue settlement negotiations.

On November 8, 2017, counsel for Brookfield again contacted me via letter requesting that the hearing on November 16, 2017, be cancelled so that the parties could

continue to pursue settlement negotiations. I denied the request via telephone and informed counsel for both parties that I would convert the hearing to a prehearing conference and allow them to participate via telephone.

On November 16, 2017, a further prehearing conference was held. Counsel for Brookfield and Lancaster were present via telephone and provided me with an update regarding the status of the case and the progress of their settlement negotiations. Counsel for Brookfield indicated that the Complainant was pursuing an alternative water source for the development and needed to get approval for the change in the development plans from the Department of Environmental Protection and also the city government. The parties agreed that a hearing in September 2018 would be advisable so that they could complete the approval process.

On December 13, 2017, a Hearing Notice scheduled an initial hearing for Monday, September 17, 2018 at 10:00 a.m.

Before the September 17, 2018 hearing, the parties indicated that the new development plans had been approved and that they were drafting a settlement agreement. They requested that the hearing be cancelled to allow them additional time to finish the settlement process. On September 14, 2018, a Cancellation Notice was issued cancelling the hearing scheduled for September 17, 2018.

The parties provided me with intermittent updates on the status of the case via electronic mail. The parties indicated that the settlement agreement was drafted and awaited approval from Lancaster. After that point, counsel for Brookfield indicated that it would file a Petition to Withdraw the Complaint.

On January 4, 2019, Brookfield filed a Praecipe to Withdraw Complaint. The Praecipe indicated that the matter was settled and that the case should be discontinued or ended.

The record closed on January 14, 2019, when a response to the Petition to Withdraw was due under Section 5.94 of the Commission's regulations. *See* 52 Pa.Code § 5.94(a).

#### FINDINGS OF FACT

1. The Complainant is Brookfield Development Corporation.
2. The Respondent is the City of Lancaster.
3. On April 11, 2016, the Complainant filed a Complaint against the City of Lancaster wherein it was alleged that the City violated Section 1501 of the Public Utility Code and the City's water service tariff in denying service to the Complainant.
4. On May 2, 2016, Respondent filed an Answer and New Matter denying all material allegations of fact in the Complaint.
5. On May 20, 2016, the Complainant filed a response to the New Matter which denied all material allegations of the New Matter.
6. By Hearing Notice dated July 6, 2016, a hearing was scheduled for August 18, 2016, at 10:00 a.m. and the matter was assigned to Administrative Law Judge Cynthia Fordham.
7. On July 12, 2016, Judge Fordham issued a Prehearing Order.
8. After several continuance requests, on March 16, 2017, the Harrisburg Scheduling Office issued a Hearing Notice which scheduled a further hearing on April 6, 2017 and reassigned the case to me.

9. After several additional continuance requests and additional hearings that were scheduled, the matter was scheduled for a hearing on September 17, 2018, which was eventually cancelled at the request of the parties.

10. On January 4, 2019, the Complainant filed a Praeceptum to Withdraw Complaint.

11. The Respondent did not object to the Complainant's request to withdraw its Complaint.

### DISCUSSION

The Commission's Rules of Practice and Procedure at 52 Pa.Code § 5.94 permit parties to petition to withdraw pleadings in a contested proceeding:

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).

The petition is granted only by permission of the presiding officer or the Commission. The presiding officer or Commission must consider the petition, any objections thereto, and the public interest in determining whether to permit withdrawal of the pleading.

A presiding officer or the Commission may disregard an error or defect of procedure or waive a requirement that does not adversely affect a substantive right of a party. 52 Pa.Code §§ 1.2(a),(c),(d). Thus, I will treat the Praeceptum to Withdraw Complaint as a Petition to Withdraw.

The Complainant has indicated in its Petition that the matter is settled, and the case should be discontinued or ended. The Respondent did not object to the Complainant's request to withdraw its complaint. Under these circumstances, granting the Complainant's request to withdraw its Complaint 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 they would otherwise incur litigating the case. Accordingly, Brookfield's Petition to Withdraw Complaint shall be granted.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to and subject matter of this proceeding. 66 Pa.C.S. § 701.

2. The Commission's Rules of Practice and Procedure permit parties to withdraw pleadings in a contested proceeding by permission of the presiding officer or Commission. 52 Pa.Code § 5.94.

3. A presiding officer or the Commission may disregard an error or defect of procedure or waive a requirement that does not adversely affect a substantive right of a party. 52 Pa.Code §§ 1.2(a),(c),(d).

4. It is in the public interest to grant the Complainant's unopposed request to withdraw its Complaint.

ORDER

THEREFORE,

IT IS ORDERED:

1. That Brookfield Development Corporation's Petition to Withdraw its Complaint at Docket No. C-2016-2539396 is granted;
2. That the Complaint of Brookfield Development Corporation against the City of Lancaster filed at Docket No. C-2016-2539396 is withdrawn; and
3. That Docket No. C-2016-2539396 be marked closed.

Date: April 1, 2019

\_\_\_\_\_/s/  
Marta Guhl  
Administrative Law Judge