

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Norbert Sliwinski	:	
	:	
v.	:	C-2016-2559985
	:	
Duquesne Light Company	:	

**INITIAL DECISION GRANTING COMPLAINANT’S REQUEST
TO WITHDRAW FORMAL COMPLAINT**

Before
Jeffrey A. Watson
Administrative Law Judge

INTRODUCTION

A customer filed a formal complaint against his electric utility alleging that he was opposed to the installation of a smart meter at his residence because of his safety concerns, and his concern that he and his wife are senior citizens and therefore in the target group of the biological effects of the installation of a smart meter.

This decision grants customer’s request to withdraw his formal complaint because it is in the public interest to do so and there is no objection to withdrawal.

HISTORY OF THE PROCEEDING

On July 22, 2016, Norbert Sliwinski (Mr. Sliwinski or Complainant) filed a formal complaint (complaint) against Duquesne Light Company (Company or Respondent) which averred that he is opposed to the installation of a smart meter at his residence. Complainant averred, *inter alia*, that the meters have not undergone any long term testing or environmental studies to determine their safety. Complainant further averred that studies have

been completed showing that pulsed radiation as produced by smart meters can cause, and have caused serious health problems and that studies have linked biological effects to RF¹ radiation exposure, including increased cancer risk, damage to the nervous system, adverse reproductive effects, DNA damage, and other issues. Complainant further averred that he and his wife are senior citizens and therefore in the target group of the biological effects of HFR.² Complainant opposed the installation of a smart meter at his residence.

Respondent filed an answer and new matter as well as preliminary objections on August 23, 2016. The preliminary objections included a 10-day notice to plead, seeking dismissal of the complaint. The answer and new matter contained a 20-day notice to plead. Complainant filed what appeared to be a reply to the new matter on September 6, 2016. On September 26, 2016, a motion judge assignment notice was issued assigning this matter to the undersigned Administrative Law Judge for disposition. The notice was received by the undersigned on September 29, 2016.

An interim order was entered on October 7, 2016 denying Respondent's preliminary objections.

On November 15, 2016, Respondent filed a motion for judgment on the pleadings. The motion contained a notice directed to Complainant to file a written response to the motion within twenty days of service on November 15, 2016. No responsive pleading was filed by Complainant.

An Initial Decision was issued on January 17, 2017, sustaining the motion for judgment on the pleadings and dismissing the complaint.

On February 7, 2017, Complainant filed Exceptions to the Initial Decision. The Commission issued an Opinion and Order on February 9, 2018, granting Complainant's

¹ Complainant did not define the acronym "RF" in his formal complaint.

² Complainant did not define the acronym "HFR" in his formal complaint.

Exceptions to the extent that he requested a hearing, reversed the Initial Decision and returned this matter to the Office of Administrative Law Judge (OALJ) for further proceedings.

On March 22, 2018, an interim order was entered setting a litigation schedule in this proceeding. The interim order provided, in part, that discovery was to be completed by July 31, 2018.

Respondent served its discovery requests upon the Complainant on May 29, 2018.

On August 20, 2018, Complainant filed a Petition For Extension Of Time, requesting a 30-day extension of time to submit responses to Respondent's first set of discovery requests directed to Complainant dated July 27, 2018, and to re-open the discovery deadline as discovery was to be completed by July 31, 2018.

On August 21, 2018, Respondent submitted a letter indicating Respondent has no objection to reopening discovery for a period of 30 days. Respondent objected to any extension to "reply" to Respondent's discovery responses.

On August 22, 2018, an interim order was entered directing that Complainant file full and complete responses to the discovery requests propounded by Respondent on or before September 14, 2018. In addition, the litigation schedule was revised and established a new deadline of September 14, 2018 to conclude discovery and provided that any dispositive motions must be filed by October 15, 2018.

On September 14, 2018, Complainant filed a Motion to Compel Duquesne Light Company to Fully Answer Complainant's First Set of Discovery Requests and Response to Duquesne Light Company's Objections and Answers (Motion to Compel) with the Commission's Secretary. The Motion to Compel was unsigned, did not contain a request for relief or certificate of service, and consisted of 85 pages. A copy of the Motion to Compel was not provided to the undersigned presiding officer.

On October 30, 2018, Respondent filed an Answer to Complainant's Motion To Compel (Answer). In the Answer, Respondent averred that Complainant filed a Motion to Compel on September 14, 2018. In its Answer, Respondent averred that it was not served with a copy of the Motion to Compel from Complainant.

On December 2, 2018 the undersigned presiding officer received correspondence from Complainant, Norbert Sliwinski, dated November 26, 2018 indicating that Complainant was closing his case at Docket No. C-2016-2559985.

On December 13, 2018, Respondent filed its Response To Complainant's Request To Withdraw Complaint, interpreting Complainant's letter dated November 26, 2018 as a request to withdraw the complaint.

On February 28, 2019, an interim order was entered scheduling a prehearing conference on Tuesday, March 12, 2019, at 10:00 a.m., to address Complainant's letter and all other outstanding issues in this proceeding. Upon review of the correspondence from Complainant dated November 26, 2018 and the response from Respondent dated December 13, 2018, it was apparent that Complainant had questions regarding filing and service of pleadings and the procedures related to the discovery process as well as the procedures and regulations related to Commission proceedings. The interim order advised the Parties that the prehearing conference would provide the Parties with an opportunity to discuss and attempt to resolve the outstanding procedural and substantive issues in this proceeding and provide Complainant an opportunity to address any concerns that he has regarding this proceeding and determine if Complainant was desirous of continuing to prosecute his formal complaint. The Parties were instructed to be prepared to address all outstanding discovery issues in this case as well as any proposed revisions to the litigation schedule in this matter and to address any outstanding issues in this case. The order further provided that the failure to participate in the conference would result in the dismissal of the case.

On March 7, 2019, Complainant filed a letter indicating he was filing a motion to withdraw his formal complaint. Complainant referenced his correspondence dated November 26, 2018 and stated, "So again, all formal complaint process has been withdrawn,

aborted, cancelled in other words, I drop this case under any and all docket numbers assigned, there will be no further action.”

The prehearing conference was convened as scheduled on Tuesday, March 12, 2019, at 10:00 a.m. Jeremy Farrell, Esquire appeared for Respondent. Complainant did not appear. I waited until 10:20 a.m. to begin the prehearing conference in order to provide Complainant with an opportunity to participate. Upon reconvening the prehearing conference, counsel for Respondent stated that Respondent had no objection to Complainant’s request to withdraw his complaint and waived the right to file a written response to Complainant’s motion. Complainant did not participate in the conference.

FINDINGS OF FACT

1. Complainant in this case is Norbert Sliwinski, who resides 856 Cottonwood Drive, Monroeville Pennsylvania (Service Address or Service Location).
2. Respondent in this case is Duquesne Light Company.
3. On July 22, 2016, Complainant filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Respondent.
4. On November 15, 2016, Respondent filed a motion for judgment on the pleadings.
5. An Initial Decision was issued on January 17, 2017, sustaining the motion for judgment on the pleadings and dismissing the complaint.
6. On February 7, 2017, Complainant filed Exceptions to the Initial Decision.
7. The Commission issued an Opinion and Order on February 9, 2018, granting Complainant’s Exceptions to the extent that he requested a hearing, reversed the Initial

Decision and returned this matter to the Office of Administrative Law Judge for further proceedings.

8. On March 22, 2018, an interim order was entered setting a litigation schedule in this proceeding.

9. On August 22, 2018, an interim order was entered revising the litigation schedule and establishing a new deadline of September 14, 2018 to conclude discovery and a deadline to file dispositive motions by October 15, 2018.

10. On December 2, 2018, the undersigned presiding officer received correspondence from Complainant, Norbert Sliwinski, dated November 26, 2018 indicating that Complainant was closing his case at Docket No. C-2016-2559985.

11. On December 13, 2018, Respondent filed a response to Complainant's correspondence. Respondent interpreted Complainant's letter dated November 26, 2018 as a request to withdraw the complaint and stated it had no objection to the request to withdraw the complaint.

12. On February 28, 2019, an interim order was entered scheduling a prehearing conference on Tuesday, March 12, 2019, at 10:00 a.m.

13. The interim order advised the Parties that the prehearing conference would provide the Parties with an opportunity to discuss and attempt to resolve any outstanding procedural and substantive issues in this proceeding and provide Complainant an opportunity to address any concerns that he may have regarding this proceeding and to determine if Complainant was desirous of continuing to prosecute his formal complaint.

14. The Parties were instructed to be prepared to address all outstanding discovery issues in this case as well as any proposed revisions to the litigation schedule and any outstanding issues at the prehearing conference.

15. On March 7, 2019, Complainant filed a letter indicating he was filing a motion to withdraw his formal complaint. Complainant referenced his correspondence dated November 26, 2018 and stated that he was dropping his case at all docket numbers assigned and that there would be no further action taken.

16. The prehearing conference was convened as scheduled on Tuesday, March 12, 2019, at 10:00 a.m. Jeremy Farrell appeared for Respondent. Complainant did not appear.

17. During the prehearing conference, counsel for Respondent stated that Respondent had no objection to Complainant's request to withdraw his complaint and waived the right to file a written response to Complainant's motion.

18. The record closed on March 12, 2019.

DISCUSSION

Section 5.94 of the Commission's regulations, entitled "Withdrawal of pleadings in a contested proceeding" provides in relevant part as follows:

(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).

Although Complainant's letter dated March 7, 2019 requesting permission to withdraw the Complaint does not technically conform to the requirements of 52 Pa.Code § 5.94(a) as it was not in the form of a petition, waiver of the requirements is permitted. Under

52 Pa.Code § 1.2, a presiding officer at any stage of an action or proceeding may waive a requirement of a rule when necessary or appropriate, if waiver does not adversely affect a substantive right of a party. Such are the circumstances in this case. Complainant's letter dated March 7, 2019, requesting permission to withdraw the Complaint, will be treated as a petition to withdraw and will be granted as continuing the litigation, under the circumstances, is not in the public interest. Respondent received a copy of the letter and counsel for Respondent indicated at the prehearing conference that it did not object to the request from Complainant.

It is appropriate to permit Complainant to withdraw his complaint, under the circumstances. Complainant was provided with an opportunity to be heard and to present his case and to address any outstanding issues or concerns at the scheduled prehearing conference on March 12, 2019 but elected to withdraw his complaint and forego attendance at the prehearing conference. In his letter dated March 7, 2019, Complainant clearly states his intent to withdraw his Complaint.

CONCLUSIONS OF LAW

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

2. Complainant as the proponent of a rule or order has the burden of proof. 66 Pa.C.S. § 332(a).

3. When a party desires to withdraw a pleading in a contested proceeding, a party 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.

4. A presiding officer at any stage of an action or proceeding may waive a requirement of a rule when necessary or appropriate, if waiver does not adversely affect a substantive right of a party. 52 Pa.Code § 1.2.

5. It is in the public interest to allow Complainant to withdraw his complaint.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the request of Complainant, Norbert Sliwinski, to withdraw his Complaint filed against Duquesne Light Company at Docket No. C-2016-2559985, is granted.

2. That the Secretary's Bureau shall mark Docket No. C-2016-2559985 closed.

Date: April 30, 2019

/s/
Jeffrey A. Watson
Administrative Law Judge