

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jamie Elliott	:	
	:	
v.	:	F-2019-3008993
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Angela T. Jones
Administrative Law Judge

INTRODUCTION

In this proceeding Jamie Elliott (Complainant) filed a formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (PUC or Commission) against PECO Energy Company (PECO or Company or Respondent). The Complainant determined it was appropriate to withdraw his Complaint. This decision grants the withdrawal requested by the Complainant because there is no objection to the request and the withdrawal is in the public interest.

HISTORY OF THE PROCEEDING

On March 25, 2019, the Complainant filed a Complaint against the Respondent. The Complainant requested a payment arrangement. The Complainant alleged his 8th and 14th amendment due process rights were violated. The Complainant also indicated that a protection from abuse order was granted for his personal safety or welfare.

The Complaint was served on the Respondent electronically by the Commission's Secretary on April 5, 2019.¹

On April 8, 2019, the Respondent filed its Answer to the Complaint. In its Answer, the Respondent denied all material allegations of the Complaint. The Respondent stated that the Complainant's balance of \$810.86 is entirely comprised of customer assistance program (CAP) arrears. The Respondent contended that the Complainant is not entitled to a PUC ordered payment arrangement pursuant to 66 Pa.C.S. § 1405(c).² The Respondent requested that the Commission dismiss the Complaint.

The hearing was scheduled with other formal complaints scheduled on the same date and time in a "call-of-the-docket" format. The Hearing Notice, dated April 9, 2019, assigned the Complaint to the undersigned Administrative Law Judge (ALJ).

A Prehearing Order dated April 9, 2019, was sent to the parties providing the procedural rules to the proceeding. The Prehearing Order confirmed the scheduled in-person hearing for Tuesday, May 14, 2019, and directed the Complainant to bring a copy of the protection from abuse order referenced in the Complaint for verification.

On May 13, 2019, the Respondent filed a Notice of Appearance adding Edward T. Fisher, Esquire, as the Company's co-counsel to the Complaint.

The in-person hearing convened as scheduled. The Complainant was present and represented himself. The Respondent was represented by Attorney Fisher who was accompanied by one witness.

¹ PECO has signed a waiver of the Section 702 requirements for service of formal complaints, 66 Pa.C.S. § 702, and has agreed to electronic service under the Commission's waiver of 702 program. Service is listed in the audit history of the case as having occurred on April 5, 2019.

² 66 Pa.C.S. § 1405(c) states, "Customer assistance program rates shall be timely paid and shall not be the subject of payment arrangements negotiated or approved by the commission."

The undersigned as a preliminary matter questioned the Complainant about the protection from abuse order referenced in the Complaint. The Complainant stated that he did not have a copy of the abuse order with him. Tr. 5-6. The Complainant also stated that he believed that the abuse order was no longer effective because it was issued four or five years ago and was only effective for two years. Tr. 6.

The parties agreed to conduct confidential settlement negotiations. After the negotiations for settlement were completed, the Complainant orally requested to withdraw his Complaint. The Respondent did not object to the oral request.

The transcript for the initial in-person hearing consisted of 12 pages. The record closed when the transcript was received by the undersigned on June 4, 2019.

This matter is ripe for decision.

DISCUSSION

This matter was a contested proceeding to resolve the Complainant's request for a payment arrangement.

The Complainant stated that he wished to withdraw his Complaint. Tr. 10-11. The Complainant confirmed that he was not coerced and was making the request of his own volition. *Id.* Section 1.2 of the Commission's regulations afford liberal construction of its regulations and provides, in relevant part, as follows:

(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.

Commission regulations address the withdrawal of pleadings in a contested proceeding at Section 5.94(a) of the Pennsylvania Code which states,

§ 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).

Section 1.8 of the Pennsylvania Code defines “Pleading” as follows:

An application, **complaint**, petition, answer, motion, preliminary objection, protest, reply, order to show cause, new matter and reply to new matter or other similar document filed in a formal proceeding.

52 Pa.Code § 1.8 (emphasis added). Based on the definition for pleading, the instant Complaint is a pleading.

The undersigned finds that the Complainant's request, although not written as a Petition for Leave to Withdraw, should be liberally construed as a pleading in compliance with 52 Pa.Code § 1.2(a). Furthermore, the substance of the actions of the Complainant overrides any defect in the appropriate form of a pleading pursuant to 52 Pa.Code § 1.2(a). Furthermore, the Complainant is representing himself in this proceeding. 52 Pa.Code § 1.2(d) affords liberal construction of the Commission's regulations in proceedings where a Complainant appears pro se.

It is noted that the Complainant performed this action under his own discretion. It is compelling that the Respondent does not object to the withdrawal requested by the Complainant.

It curtails the costs of the Commission and the parties, Mr. Elliott and PECO, to cease any further consideration of the Complaint if the matter is moot or is not viable or no longer in need of pursuit by the Complainant. For these reasons, I find that the Complainant's request to withdraw his Complaint is in the public interest.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to and the subject matter of this proceeding. 66 Pa.C.S. § 701.
2. 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. 52 Pa.Code § 1.2.
3. 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. 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.

