

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jason Paul	:	
	:	
v.	:	C-2019-3007458
	:	
CNX Gas Company, LLC	:	

INITIAL DECISION

Before
Mark A. Hoyer
Deputy Chief Administrative Law Judge

INTRODUCTION

This Initial Decision grants the petition for leave to withdraw the Formal Complaint.

HISTORY OF THE PROCEEDING

Jason Paul (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against CNX Gas Company LLC (Respondent) on January 14, 2019, alleging the “utility is stealing gas.”

On February 13, 2019, Respondent filed Preliminary Objections and a Brief in Support of Preliminary Objections (Brief).

On February 21, 2019, Complainant filed a five-page document. One page appears to be a letter addressed to “Mr. Hall,” the second page is titled, “Response to Defendant

Objections,” the third page is a one-page exhibit marked “A,” and the fourth and fifth pages are a two-page exhibit marked “B.”

A Motion Judge Assignment Notice was issued on March 12, 2019 and assigned this proceeding to Administrative Law Judge (ALJ) Emily I. DeVoe.

On March 13, 2019, ALJ DeVoe issued an Interim Order, interpreting Complainant’s February 21, 2019 filing as a Motion to Amend the Complaint and dismissing Respondent’s Preliminary Objections as moot. ALJ DeVoe ordered, *inter alia*, Complainant to file with the Secretary’s Bureau and serve upon Respondent an Amended Complaint on or before April 3, 2019, and Respondent to file any responsive pleading, objections, or other petitions or motions within twenty days of receipt of the Amended Complaint.

On April 4, 2019, Complainant filed a one-page Amended Complaint with the Secretary’s Bureau, averring, *inter alia*, Respondent has been operating gas activities on or around his property and violated various sections of the Pennsylvania Public Utility Code (the Code), including 52 Pa.Code §§ 59.33, 59.38, 59.47, 59.64, and 59.74.

On April 24, 2019, Respondent filed Preliminary Objections to the Amended Complaint. Respondent also averred it made multiple attempts to contact Complainant to discuss the Complaint, without success.

On May 1, 2019, Complainant filed a response to the Preliminary Objections to the Amended Complaint.

On May 22, 2019, ALJ DeVoe issued an Interim Order, holding Respondent’s Preliminary Objections to the Amended Complaint in abeyance and scheduling a telephone prehearing conference for June 27, 2019 at 10:00 a.m. The Commission issued a Prehearing Conference Notice on May 10, 2019.

On May 30, 2019, Complainant filed a “Motion for Relief.”

On June 27, 2019, ALJ DeVoe convened a prehearing conference. Mr. Paul was present on his own behalf, and Mr. J.R. Hall, Esquire, was present on behalf of Respondent. The Parties engaged in off-the-record settlement discussions via the settlement judge process. The Parties agreed to continue their settlement efforts and file a Status Report in 60 days.

On August 30, 2019, ALJ DeVoe received a Status Report from Respondent, advising, *inter alia*, the Parties had telephone discussions following the June 27, 2019 conference and that Respondent determined it does not own or operate a well that is the subject of Complainant's Complaint.

On September 9, 2019, ALJ DeVoe issued an Interim Order, explaining that it was unclear how or if Complainant wanted to proceed with the instant litigation and directing Complainant to submit correspondence to her by September 20, 2019, advising whether he wishes to continue his Complaint or whether he wishes to withdraw his Complaint. ALJ DeVoe advised the Parties that if she received a certificate of satisfaction or a certified statement from Respondent's counsel by September 20, 2019, Complainant would not be required to submit separate correspondence. ALJ DeVoe advised that if she did not receive correspondence from Complainant or a certificate of satisfaction/certified statement from Respondent's counsel by September 20, 2019, she would schedule a status conference to ascertain how to proceed with this matter.

ALJ DeVoe did not receive any correspondence from Complainant and Respondent did not file a certificate of satisfaction/certified statement by September 20, 2019. ALJ DeVoe scheduled a second status conference to be held on October 23, 2019.

On October 15, 2019, Complainant filed a Motion to Discontinue.¹

On October 23, 2019, Deputy Chief Administrative Law Judge Mark A. Hoyer presided over the scheduled second status conference. Complainant did not appear for the

¹ Complainant's Motion to Discontinue is being treated as a Petition for Leave to Withdraw the Complaint pursuant to 52 Pa.Code § 5.94.

conference. Respondent was once again represented by J.R. Hall, Esquire. At the conference, the undersigned was advised by counsel for the Respondent that Complainant may have filed a Motion for Discontinuance.² Counsel did not object to the Motion for Discontinuance and waived the right to answer it.

An Interim Order closing the hearing record was issued on November 22, 2019. This matter is now ripe for disposition. For the reasons set forth below, Complainant's petition for leave to withdraw the Complaint will be granted.

FINDINGS OF FACT

1. Complainant is Jason Paul.
2. Respondent is CNX Gas Company LLC.
3. On October 15, 2019, Complainant filed a "Motion for Discontinuance" which is being treated as a petition for leave to withdraw the instant Complaint.
4. A second status conference was held on October 23, 2019.
5. Respondent did not object to the petition for leave to withdraw and waived the right to answer the petition for leave to withdraw.

DISCUSSION

Section 5.94 of the Commission's regulations, 52 Pa.Code § 5.94, in relevant part, provides:

- (a) [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

² The undersigned discovered that the Motion for Discontinuance had been filed after the status conference concluded on October 23, 2019.

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, any objection thereto and the public interest, the presiding officer or the Commission will determine whether the withdrawal will be permitted.

The filing of the instant Complaint and the answer thereto constitute a contested proceeding. Therefore, Complainant's petition for leave to withdraw his Complaint must be considered under the provisions of Section 5.94. Respondent does not object to Complainant's petition for leave to withdraw.

Section 703(a) of the Public Utility Code, 66 Pa.C.S. § 703(a), provides for dismissal of a complaint without a hearing, if in the Commission's opinion, a hearing is not necessary in the public interest. In the instant case, Complainant expressed his intent to withdraw the Complaint. Thus, proceeding to hearing would not be in the public interest.

Accordingly, granting Complainant's petition for leave to withdraw his Complaint will terminate the litigation, and thereby save the Parties and the Commission the costs in time and money of litigating this matter to conclusion without impacting the public interest.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. § 701.
2. Section 5.94 of the Commission's Rules of Practice and Procedure, 52 Pa.Code § 5.94, permits a party to withdraw a pleading in a contested proceeding by permission of the presiding officer or Commission.
3. In determining whether to permit withdrawal of the pleading, the presiding officer or Commission must consider the petition, any objections thereto and the public interest. 52 Pa.Code § 5.94.

4. Section 703(a) of the Public Utility Code, 66 Pa.C.S.A. § 703(a), provides for dismissal of a complaint without a hearing, if in the Commission's opinion, a hearing is not necessary in the public interest.

ORDER

THEREFORE,

IT IS ORDERED:

1. That Complainant Jason Paul's petition for leave to withdraw his Complaint against Respondent, CNX Gas Company LLC at Docket No. C-2019-3007458, is granted.

2. That the Complaint of Jason Paul against CNX Gas Company LLC at Docket No. C-2019-3007458, is dismissed.

3. That the Docket in this proceeding, Docket No. C-2019-3007458, be marked closed.

Date: February 18, 2020

/s/
Mark A. Hoyer
Deputy Chief Administrative Law Judge