

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Brandi Lee Umbaugh	:	
	:	
v.	:	C-2019-3012282
	:	
West Penn Power Company	:	

**INITIAL DECISION**

Before  
Eranda Vero  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision grants Brandi Lee Umbaugh’s request to withdraw her Complaint.

**HISTORY OF THE PROCEEDING**

On August 19, 2019, Brandi Lee Umbaugh (Complainant or Ms. Umbaugh) filed a Formal Complaint (Complaint) against West Penn Power Company (Respondent) with the Pennsylvania Public Utility Commission (Commission) alleging that the Respondent is improperly demanding that she purchase more utility poles than are strictly needed to serve her property. As relief, Ms. Umbaugh requested that the Respondent not hold her responsible for purchasing more equipment than is needed to serve her property.

On September 9, 2019, Respondent filed an Answer and New Matter to the Complaint. On October 2, 2019, Ms. Umbaugh filed an untimely reply to Respondent’s New Matter.

By Hearing Notice dated October 31, 2019, an in-person hearing was scheduled for December 9, 2019, at 10:00 a.m., and the matter was assigned to me. A Corrected Hearing Notice, dated November 7, 2019, changed the hearing into a telephonic one and provided the parties with the dial-in number and passcode.

I issued a Prehearing Order on November 12, 2019. The Prehearing Order directed the parties to comply with various procedural requirements and directed that a request to change the scheduled hearing should be sent to me at least five days prior to the hearing date, be in writing and state the agreement or opposition of the other party.

The hearing convened as scheduled on December 9, 2019. Prior to convening the hearing, I offered the parties the opportunity to engage in settlement discussions. At the conclusion of the settlement discussion, the parties requested a 60-day continuance of the hearing in order to explore alternative ways to bring electric service to Ms. Umbaugh's property. I granted the parties' request on the record. By Hearing Notice dated February 11, 2020, a further telephonic hearing was scheduled in this matter for February 19, 2020, at 10:00 a.m. A second Prehearing Order was issued on the same day.

The further hearing convened as scheduled on February 19, 2020. Ms. Umbaugh requested a second 60-day extension of the hearing in order to resolve an easement issue and a water issue related to her property. Tr. 12. Counsel for Respondent requested that the Complaint be dismissed without prejudice for failure to prosecute. *Id.* Ms. Umbaugh's request was granted on the record over Respondent's objections. She was instructed to file a status report by no later than March 20, 2020. Tr. 15.

On March 18, 2020, Ms. Umbaugh informed me via e-mail that, "...together with Mr. Harrington, ... we have come up with an acceptable adjustment to the plans to suit us both in successfully running electricity to my home. I have no immediate desire to proceed with the case at this time." Also by e-mail dated March 30, 2020, counsel for the Respondent indicated that West Penn Power Company does not object to the Complainants' request for leave to withdraw the Complaint.

The record closed on March 30, 2020.

For the reasons set forth below, the Complainant's request to withdraw her Complaint is granted.

#### FINDINGS OF FACT

1. The Complainant is Brandi Lee Umbaugh.
2. The Respondent is West Penn Power Company.
3. On August 19, 2019, the Complainant filed a Complaint with the Commission against the Respondent.
4. On September 9, 2019, Respondent filed an Answer and New Matter to the Complaint.
5. On October 2, 2019, Ms. Umbaugh filed an untimely reply to Respondent's New Matter.
6. A Corrected Hearing Notice, dated November 7, 2019, informed the parties that a telephonic hearing was scheduled for December 9, 2019, at 10:00 a.m.
7. On December 9, 2020, the parties requested and were granted a 60-day continuance of the scheduled hearing in order to conduct a field visit to Ms. Umbaugh's property and explore an alternative resolution of the Complaint.
8. By Hearing Notice dated February 11, 2020, a further telephonic hearing was scheduled in this matter for February 19, 2020, at 10:00 a.m.

9. On February 19, 2020, Ms. Umbaugh requested and was granted a second 60-day continuance of the scheduled hearing in order resolve an easement and a water way issue related to her property.

10. On March 18, 2020, Ms. Umbaugh requested leave to withdraw her Complaint.

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

### DISCUSSION

The Commission's Rules of Practice and Procedure at 52 Pa.Code § 5.94 permit parties to withdraw pleadings in a contested proceeding. The provision at 52 Pa.Code § 5.94(a) allows withdrawal of pleadings by filing, with the Commission and service to parties, a petition for leave to withdraw the pleading. 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. For purposes of this decision, the Complainants' written statement that she no longer desires to proceed with her Complaint against West Penn Power Company will be treated as a Petition for Leave to Withdraw the Complaint. See 52 Pa.Code § 1.2 which provides that the Commission may, in order to secure the just, speedy and inexpensive determination of actions or proceedings, disregard an error or defect of procedure which does not affect the substantive rights of the parties.

On March 18, 2020, Ms. Umbaugh informed me via e-mail that, "...together with Mr. Harrington, ... we have come up with an acceptable adjustment to the plans to suit us both in successfully running electricity to my home. I have no immediate desire to proceed with the case at this time." Also by e-mail dated March 30, 2020, counsel for the Respondent indicated that West Penn Power Company does not object to the Complainants' request for leave to withdraw the Complaint.

The Commission has no interest in mandating that a complainant continue litigation when she has indicated that she no longer wishes to proceed with her complaint. In the present case, the Complainant has effectively abandoned her Complaint. Thus, proceeding to hearing would not be in the public interest. Further, the Complaint does not allege any facts that would impact the public interest. The Complaint does not contain any novel issues or issues of public interest. Under these circumstances, granting the Complainant's request to withdraw her 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, the Complainant's request to withdraw the present Complaint is granted.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to and subject matter of this proceeding. 66 Pa.C.S.A. § 701.
2. The Commission's Rules of Practice and Procedure at 52 Pa.Code § 5.94 permit parties to withdraw pleadings 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. Granting the Complainant's withdrawal request is in the public interest.

