

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Municipality of Penn Hills	:	
	:	
v.	:	C-2019-3013809
	:	
Union Railroad Company	:	

INITIAL DECISION

Before
Katrina L. Dunderdale
Administrative Law Judge

INTRODUCTION

This Initial Decision grants Complainant’s request to withdraw its formal complaint because Complainant cannot access records due to closures arising from the COVID-19 pandemic, the withdraw request is unopposed, and the public interest benefits from granting the request.

HISTORY OF THE PROCEEDING

On October 24, 2019, the Municipality of Penn Hills (Penn Hills) filed a formal complaint against Union Railroad Company (Union RR) with the Pennsylvania Public Utility Commission (Commission). Penn Hills alleged a storm water pipe owned by Union RR was clogged, causing severe flooding in the area and there was an unsafe condition caused by a building located on property belonging to Union RR at the same location. Penn Hills requested the Commission order the railroad to unclog the storm water line and demolish or secure the unsafe building.

On November 14, 2019, Union RR filed its Answer and New Matter, in which Union RR generally denied the allegations concerning the storm water line and averred in New Matter that the storm water line inlet at issue was not located on the railroad company's property. Union RR also averred it had no right or obligation to maintain, repair, secure, police or demolish the storm water line inlet or the building allegedly owned by the Canadian National Railway Company (Canadian Railway).

On November 25, 2019, the Office of Administrative Law Judge issued a notice scheduling an Initial Call-In Telephonic Pre-Hearing Conference for Tuesday, December 17, 2019, at 9:00 a.m., and on the same day, the presiding officer issued a Prehearing Conference Order.

On December 17, 2019, the presiding officer conducted a telephonic prehearing conference at which the following parties were present and represented: Penn Hills, Union RR, the City of Pittsburgh (the City), the Commission's Bureau of Investigation and Enforcement (BIE) and the Pennsylvania Department of Transportation (PennDOT). The formal complaint originally involved PennDOT, the City, the County of Allegheny (the County), the Borough of Verona (Verona) and BIE. However, Penn Hills' formal complaint related solely to Union RR and Penn Hills noted at the prehearing conference that it never intended its formal complaint to include PennDOT, the City, the County or Verona in the proceeding.

On January 14, 2020, the presiding officer issued the First Interim Order which dismissed PennDOT, the County, the City and Verona as parties to this proceeding. In addition, the caption and the Parties of Record list was amended to reflect the formal complaint involved the Municipality of Penn Hills versus Union Railway Company. The First Interim Order required the remaining parties (Penn Hills, Union RR and BIE) to file any applicable motion or petition on or before February 15, 2020.

On February 13, 2020, Union RR filed its Unopposed Motion for Additional Time to File Prehearing Motions and Petitions (Motion). Union RR averred it has been unable to complete its search to determine ownership, possession and the relative rights and obligations of

the parties as it relates to the parcels in question. In addition, Union RR noted Penn Hills had not yet filed a reply to Union RR's New Matter or located documents requested by Union RR (which request included deeds, leases or other agreements concerning the parcels in question). Union RR requested an additional 45 days in which to file prehearing motions or petitions and to continue the parties' search for documentation.

Also, on February 13, 2020, the presiding officer issued the Second Interim Order which granted additional time to the parties. The Second Interim Order required the parties to file any applicable motion or request on or before April 3, 2020.

On March 26, 2020¹, Union RR filed electronically its Motion to Compel the Municipality of Penn Hills to Answer Written Discovery, or, Alternatively, to Schedule a Telephonic Status Conference to Suspend or Reset Existing Deadlines (Motion to Compel). Union RR averred it served interrogatories on Penn Hills on February 24, 2020 and responses to those interrogatories were due by March 25, 2020. Union RR contended Penn Hills had not provided responses to its interrogatories and had not filed a pleading in response to Union RR's New Matter in its Answer. Union RR asserted it needed Penn Hills' responses in order to comply with the presiding officer's directive to file all appropriate motions on or before April 3, 2020.

Due to the continuing COVID-19 pandemic, the presiding officer requested the parties' availability to discuss the Motion to Compel by telephone on March 27, 2020. Accordingly, the parties met informally by telephone at 10:00 a.m. on March 27, 2020 with the presiding officer. A court reporter was not present. Present on the teleconference were representatives of Penn Hills, Union RR and BIE. The parties discussed the need to reset or amend the litigation schedule as well as discussing Union RR's Motion to Compel. On April 3,

¹ On or about March 16, 2020, the Commission's offices were closed due to the Coronavirus pandemic (COVID-19). The Commission's offices remain closed as of the date of this Initial Decision.

2020, at 10:56 a.m., the presiding officer sent an email to the parties to confirm the conversation with the parties by telephone on March 27, 2020.²

On April 16, 2020, the presiding officer issued the Third Interim Order which amended the litigation schedule to provide the parties with additional time. The Third Interim Order required Penn Hills to file its response to Union RR's New Matter on or before May 1, 2020; required Penn Hills to respond to Union RR's interrogatories on or before June 5, 2020; and required the parties to file any applicable motions or petitions on or before June 19, 2020.

On May 5, 2020, Union RR filed the Motion for Judgment by Admission or Judgment on the Pleadings (Motion). Union RR averred the Motion should be granted because Penn Hills failed or refused to file a reply to New Matter, violated the Third Interim Order dated April 16, 2020, which ordered Penn Hills to file a pleading responsive to Union RR's New Matter and the formal complaint was deficient as a matter of law. Union RR contended that, pursuant to Pa.R.C.P. No. 1029(b), the consequence of Penn Hills' failure to deny specifically or by necessary implication the allegations Union RR made in its New Matter is that Union RR's averments in its New Matter have been admitted by Penn Hills.

On May 6, 2020, Penn Hills filed its response to Union RR's New Matter. Penn Hills generally denied the allegations set forth in paragraphs 2 and 3 of Union RR's New Matter and asserted the paragraphs stated conclusions of law which required no response.

Before the presiding officer entered an interim order disposing of Union RR's Motion, Penn Hills filed a Motion to Withdraw Complaint on June 1, 2020. The Motion did not indicate if Union RR objected to the Motion but did indicate Union RR was willing to further extend deadlines to accommodate Penn Hills. However, Penn Hills indicated it wished to withdraw its formal complaint because the COVID-19 pandemic made researching deeds and other discovery material impossible.

² The presiding officer informed the parties she could not issue an order due to the pandemic but would issue an order as soon as possible to confirm the email she would send to the parties after the telephonic status conference.

The hearing record closed on June 1, 2020, pursuant to 52 Pa.Code § 5.94 (relating to withdrawal of pleadings in a contested proceeding) and § 5.431(a) and (b) (relating to Close of the Record).

FINDINGS OF FACT

1. Complainant in this proceeding is the Municipality of Penn Hills, located in Allegheny County, Pennsylvania.
2. Respondent in this proceeding is Union Railroad Company.
3. On June 1, 2020, counsel for the Municipality of Penn Hills filed a Motion to Withdraw Complaint requesting a withdrawal of the formal complaint filed on October 24, 2019.
4. Respondent did not file an objection to the withdrawal.

DISCUSSION

The Commission is empowered and charged with the duty to enforce the requirements of the Public Utility Code. 66 Pa.C.S.A. § 501(a). In this proceeding, Complainant originally sought an order from the Commission finding Respondent's storm water pipe was clogged, causing severe flooding on property owned by Penn Hills. In addition, Penn Hills alleged there was an unsafe condition caused by a building located on the same property which belonged to Union RR.

Due to the COVID-19 pandemic, Complainant was unable to respond to Discovery Requests from Respondent for information about ownership of the real estate and structures on the subject property. Complainant needed to access records before it could respond to Respondent's Discovery Requests, but those records were located in buildings and locations that were closed due to the pandemic. As of the date of this Initial Decision, the buildings and

records remained inaccessible to Penn Hills. Complainant indicated it reached the conclusion that it was better to withdraw the formal complaint until such time as it can access the records and obtain actual evidentiary proof about the storm water pipe at issue herein. Accordingly, Penn Hills seeks an order from the Commission granting its request to withdraw the formal complaint.

As the party seeking an order from the Commission granting a request to withdraw a formal complaint, Complainant bears the burden of proof in this case. Provisions at 66 Pa.C.S.A. § 332(a) state, “[e]xcept as may be otherwise provided in section 315 (relating to burden of proof) or other provisions of this part or other relevant statute, the proponent of a rule or order has the burden of proof.”³

Pursuant to 52 Pa.Code § 5.94(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 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.”

In this proceeding, Complainant no longer wishes to pursue this formal complaint. Respondent did not file an objection to the request. The parties worked together for months to move the proceeding forward but the consequences of the pandemic left Complainant without any real ability to access documents it would need in order to meet its burden of proof. Rather than waste its and Respondent’s time by requesting additional continuances until conditions arise from the pandemic ease, Complainant asks for permission to withdraw the formal complaint. Forcing the parties to proceed with litigation will not serve the public interest and will result in a waste of time and money for all parties involved. Accordingly, Complainant’s request to withdraw will be granted.

³ Provisions at 66 Pa.C.S.A. § 315(a) do not apply in this proceeding because this matter did not arise upon the motion of the Commission, involve a proposed or existing rate of a public utility, or involve a complaint about a proposed increase in rates.

CONCLUSIONS OF LAW

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

2. The Commission has the power, and the duty, to enforce the requirements of the Public Utility Code. 66 Pa.C.S.A. § 501(a).

3. Pursuant to 66 Pa.C.S.A. § 332(a), the burden of proof in this proceeding is on Complainant as the proponent of a Commission Order.

4. The Commission's regulations permit parties to withdraw pleadings in a contested proceeding by permission of the presiding officer or Commission. 52 Pa.Code § 5.94(a).

5. 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).

6. No litigable matter remains in this proceeding and it is in the public interest to grant Complainant's request to withdraw the Complaint, and to close the matter. 52 Pa.Code § 5.94(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the request to withdraw the formal complaint filed in Municipality of Penn Hills v. Union Railroad Company at Docket No. C-2019-3013809 is granted.

2. That the record at Docket No. C-2019-3013809 shall be marked closed.

Date: July 28, 2020

/s/
Katrina L. Dunderdale
Administrative Law Judge