

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jennifer and Wesley Orvosh	:	
	:	
v.	:	C-2019-3009777
	:	
West Penn Power Company	:	

INITIAL DECISION

Before
Mark A. Hoyer
Deputy Chief Administrative Law Judge

INTRODUCTION

This initial decision grants the oral petition for leave to withdraw the formal complaint because there is no objection to the petition and granting it is in the public interest.

HISTORY OF THE PROCEEDING

On April 29, 2019, Jennifer Orvosh and Wesley Orvosh (Complainants) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against West Penn Power Company (Respondent), objecting to the installation of a smart meter at their residence at 175 Laurel Way, Spring Church, PA 15686. As relief, Complainants requested that a smart meter not be installed in their home.

On May 23, 2019, Respondent filed an Answer and New Matter to the Complaint. Respondent averred, *inter alia*, that Complainants have refused installation of a smart meter, which constitutes legal grounds to terminate service to the service location. Respondent also

averred that installation of the smart meter is required by Act 129 of 2008¹ (Act 129) and Respondent's Commission-approved Smart Meter Deployment Plan (SMP), and neither Act 129 nor the SMP permit Complainants to opt-out of smart meter installation. Respondent essentially denied the remaining material averments set forth in the Complaint.

On May 23, 2019, Respondent also filed Preliminary Objections to the Complaint. Respondent averred that the request to opt-out of smart meter installation is not legally recoverable and Complainants failed to allege that Respondent violated any Commission statute, regulation, order, or tariff provision with regard to the installation of the smart meter at the service location. Respondent further averred it is required by Act 129 and its SMP to install a smart meter at the service location, and the Formal Complaint is legally insufficient because it fails to state a claim upon which the Commission can grant relief.

On June 28, 2019, the Commission issued a Call-In Telephone Hearing Notice, scheduling a telephonic hearing for August 29, 2019.

By Interim Order issued on July 1, 2019, Respondent's Preliminary Objections were denied.

An Interim Order Establishing Initial Litigation Schedule was issued on July 1, 2019. In addition to establishing the deadlines for the litigation schedule, the Interim Order set forth the rules and procedures that would be followed in this proceeding.

An Interim Order Scheduling Prehearing Conference was also issued on July 1, 2019. A prehearing conference was scheduled for August 29, 2019.

On July 2, 2019, the Commission issued a Corrected Call-In Telephone Hearing Notice, converting the August 29, 2019 proceeding to a prehearing conference.

¹ 66 Pa.C.S. § 2806.1 *et seq.*

On July 22, 2019, Respondent filed a certificate of service indicating that it forwarded to Complainants Interrogatories and Requests for Production of Documents (discovery requests) via first class mail. In its discovery requests, Respondent sought information and documents related to the Complainants' allegations.

On August 14, 2019, Respondent submitted a certificate of service regarding its service of its witness information upon Complainants in accordance with the established litigation schedule.

On August 27, 2019, Respondent filed a Motion to Compel Responses to Interrogatories and Document Requests (Motion to Compel), averring, *inter alia*, it had not received any response to its discovery requests.

On August 29, 2019, Administrative Law Judge (ALJ) Emily I. DeVoe convened a telephone prehearing conference. Mr. Orvosh was present and represented himself. Ms. Orvosh was not present. Lauren Lepkoski, Esq., and Tori Giesler, Esq., were present on behalf of Respondent. During the conference, the parties discussed a variety of issues, including settlement, discovery, and the exchange of witness information. (Respondent had provided its witness information).

On September 3, 2019, ALJ DeVoe issued an Interim Order holding the Motion to Compel in abeyance, extending the deadline for Complainants to provide their witness information to Respondent until September 20, 2019, directing Complainants to answer or object to each of the discovery requests dated July 22, 2019, by September 20, 2019, and directing Respondent to file any appropriate motion by September 30, 2019.

On September 30, 2019, Respondent filed an amended motion to compel the discovery requests. On October 5, 2019, Complainants served their responses to the discovery requests on Respondent. On October 16, 2019, Respondent withdrew its amended motion to compel.

Pursuant to the Interim Order Establishing Initial Litigation Schedule, discovery closed on October 9, 2019.

Pursuant to the Interim Order Establishing Initial Litigation Schedule, status reports were due from the parties on October 30, 2019. Respondent filed a status report as required by the Interim Order Establishing Initial Litigation Schedule. On November 8, 2019, Complainants filed a status report.

On October 30, 2019, Complainants mailed discovery requests to Respondent.

On January 21, 2020, a Judge Change Notice was issued assigning the undersigned to this case and informing the parties of the initial telephone hearing on February 11, 2020.

On January 21, 2020, Complainants filed a pleading captioned “Withdraw of Complaint.”² The petition for leave to withdraw stated as follows: “I withdraw my complaint.”

On January 29, 2020, Respondent filed a letter answer in response to the petition for leave to withdraw. Respondent did not object to the petition for leave to withdraw but, in its answer, Respondent stated as follows:

However, should the Petition be considered a request to withdraw without prejudice, West Penn strongly opposes it, as not only has West Penn spent a considerable amount of time and resources to prepare its defense to Mr. and Mrs. Orvosh’s Formal Complaint, the Pennsylvania Public Utility Commission has also expended significant resources in moving the above-captioned proceeding forward. It is not in the public interest to allow Mr. and Mrs. Orvosh to withdraw their formal complaint only to allow them leave to simply re-file at any point in the future with respect to the same or similar allegations.

² Complainants’ pleading was treated as a petition for leave to withdraw the formal complaint pursuant to 52 Pa.Code §§ 1.2 and 5.94.

On January 30, 2020, Respondent served its proposed exhibits for the hearing scheduled on February 11, 2020.

On February 11, 2020, the initial call-in telephone hearing convened as scheduled. Complainants orally petitioned for leave to withdraw their Complaint and not file a subsequent complaint raising the same or similar issues as those contained in this Complaint proceeding. Transcript of Hearing on February 11, 2020, p. 19. Respondent did not object to the petition for leave to withdraw.

On February 27, 2020, a transcript of the initial call-in telephone hearing was received by the undersigned.

On February 28, 2020, the record was closed by Interim Order. For the reasons set forth below, Complainants' petition for leave to withdraw the Complaint will be granted.

FINDINGS OF FACT

1. Complainants are Jennifer and Wesley Orvosh.
2. Respondent is West Penn Power Company.
3. At the hearing on February 11, 2020, Complainants orally petitioned for leave to withdraw their Complaint and not file a subsequent complaint raising the same or similar issues as those contained in this Complaint proceeding (Tr. 19).
4. No objections to the oral petition for leave to withdraw the Complaint were raised by Respondent at the hearing (Tr. 19).

DISCUSSION

Section 5.94(a) of the Commission's regulations, 52 Pa.Code § 5.94(a), 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 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, Complainants' oral petition for leave to withdraw their Complaint at the hearing on February 11, 2020, must be considered under the provisions of Section 5.94. No objection to the petition for leave to withdraw the Complaint was raised at the hearing or filed.

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, Complainants expressed their intent to withdraw the Complaint and not file a subsequent complaint raising the same or similar issues to those raised in this Complaint. Thus, proceeding further with hearing would not be in the public interest.

Accordingly, granting Complainants' petition for leave to withdraw their 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.
5. The Complainants' petition for leave to withdraw their Complaint should be granted because there is no objection to the petition and granting the petition is in the public interest. 52 Pa.Code § 5.94(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That Complainants' oral petition for leave to withdraw the Formal Complaint filed at Docket No. C-2019-3009777 and not file a subsequent complaint raising the same or similar issues to those raised in this Formal Complaint proceeding, is granted.

2. That the Complaint of Jennifer and Wesley Orvosh against West Penn Power Company at Docket No. C-2019-3009777 is withdrawn with prejudice.

3. That the Docket in this proceeding, Docket No. C-2019-3009777, be marked closed.

Date: May 27, 2020

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