

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Ronald Roebuck and Lora Roebuck	:	
	:	
v.	:	C-2019-3011822
	:	
Aqua Pennsylvania, Inc.	:	

**INITIAL DECISION**

Before  
Dennis J. Buckley  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision grants the Complainants' request to withdraw their complaint objecting to their water rate increase because it is in the public interest to allow the withdrawal.

**HISTORY OF THE PROCEEDING**

On July 26, 2019, Ronald and Lora Roebuck (Complainants) filed a formal complaint against Aqua Pennsylvania, Inc., docketed herein at C-2019-3011822, objecting to their water rate increase. At the same time, the Complainants filed a formal complaint docketed at C-2019-3011827 objecting to their wastewater rate increase.

On August 15, 2019, Aqua Pennsylvania, Inc. (Aqua) filed answers at both dockets denying any violation of the Public Utility Code (Code) or the regulations of the Commission. Specifically, Aqua argued that the Complainants' rates had been established by the Commission at Docket Nos. R-2018-3003558 (water) and R-2018-3003561 (wastewater) with an

effective date of May 24, 2019. Aqua pointed out that the rate increases had become part of Aqua's lawfully filed tariffs. Aqua asked that both complaints be referred to one presiding officer and maintained that Complainants were provided with notice of the rate cases. Aqua requested that the complaints be dismissed with prejudice.

These cases were assigned to the undersigned, and on August 22, 2019, a hearing Notice was issued setting October 3, 2019, as the date of a telephonic hearing in both complaints.

On October 3, 2019, a telephonic hearing convened pursuant to the hearing Notice. Complainant Ronald Roebuck appeared and represented himself and Lora Roebuck. Mary McFall Hopper, Esquire, appeared on behalf of Aqua. After convening the hearing, an off-the-record discussion took place. I explained to Mr. Roebuck that to be heard on the rate increases, the complaints should have been filed during the pendency of the 2018 rate cases. Mr. Roebuck accepted this explanation and agreed to withdraw his complaints in both dockets. This verbal request was placed on the record as was the Complainants' continuing objection to the rate increases. Counsel for Aqua had no objection to the request to withdrawal of both complaints.

On October 22, 2019, a six-page hearing transcript was filed with the Commission's Secretary's Bureau. Complainants' request to withdraw their complaint in this matter will be granted.<sup>1</sup>

#### FINDINGS OF FACT

1. The Complainants are Ronald and Lora Roebuck.
2. The Respondent is Aqua Pennsylvania, Inc., which provides water and wastewater service to the Complainants.

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<sup>1</sup> An Initial Decision granting the Complainants' request to withdraw their complaint at Docket No. C-2019-3011827 will be issued separately.

3. On July 27, 2019, Ronald and Lora Roebuck filed formal complaints against Respondent at Docket Nos. C-2019-3011822 (water) and C-2019-3011827 (wastewater) objecting to the rate increases authorized by the Commission's Order issued on May 9, 2019, at Docket Nos. R-2018-3003558 (water) and R-2018-3003561 (wastewater), to be effective May 24, 2019.

4. On August 15, 2019, Aqua Pennsylvania, Inc., filed answers at both dockets denying any violation of the Public Utility Code or the regulations of the Commission.

5. Complainants' rates had been established by the Commission at Docket Nos. R-2018-3003558 (water) and R-2018-3003561 (wastewater) with an effective date of May 24, 2019.

6. The rate increases had become part of Aqua's lawfully filed tariffs on May 24, 2019.

7. On August 22, 2019, a hearing Notice was issued setting October 3, 2019, as the date of a telephonic hearing.

8. On October 3, 2019, a telephonic hearing convened pursuant to the hearing Notice.

9. Having been apprised by the presiding officer that to be heard, the Complaints would have to have been filed during the pendency of the 2018 rate cases, Complainants withdrew both complaints.

10. Counsel for Aqua had no objection to the request to withdrawal the complaints.

## DISCUSSION

The Commission's Rules of Practice and Procedure at 52 Pa. Code § 5.94 permit parties to petition to withdraw 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).

Thus, 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.

Further, although the verbal request to withdraw the complaints does not technically comply with the Commission's regulations at 52 Pa. Code § 5.94(a) in that the request was not made through the filing of a Petition with the Commission, I will disregard this error in procedure pursuant to Section 1.2 of the Commission's regulations. Section 1.2 provides that “[t]his subpart shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which it is applicable”, and that the presiding officer may disregard an error or defect of procedure which does not affect the substantive rights of the parties. 52 Pa. Code § 1.2(a).

At hearing, it was explained to Mr. Roebuck that for the Complainants’ objection to Aqua’s rates increases to be heard, the complaints should have been filed during the pendency of the 2018 rate cases. I note that the interests of residential consumers in the 2018 rate cases were presented by the Pennsylvania Office of Consumer Advocate (OCA), which was an active

participant in those cases. The rates that the Roebucks are complaining about as excessive were approved by the Commission in an Order issued May 9, 2019, and became a part of Aqua's lawfully filed tariffs on May 24, 2019. A utility tariff has the force and effect of law in Pennsylvania, and is legally binding upon the utility, its customers and the public. 66 Pa. C.S. § 1303; *DiSanto v. Dauphin Consolidated Water Supply Co.*, 436 A.2d 197 (Pa. Super. 1981); *Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Cmwlth. 1981).

Aqua did not object to the withdrawal of the complaints. Administrative efficiency and the conservation of resources dictate that the public interest is best served by allowing withdrawal of the complaint herein.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa. C.S. § 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. A utility tariff has the force and effect of law in Pennsylvania, and is legally binding upon the utility, its customers and the public. 66 Pa. C.S. § 1303; *DiSanto v. Dauphin Consolidated Water Supply Co.*, 436 A.2d 197 (Pa. Super. 1981); *Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Cmwlth. 1981).

4. It is in the public interest to allow the withdrawal of the complaint docketed herein at Docket No. C-2019-3011822.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Petition for Leave to Withdraw the Complaint filed by Ronald and Lora Roebuck against Aqua Pennsylvania, Inc., at Docket No. C-2019-3011822 is granted.
2. That the formal Complaint filed by Ronald and Lora Roebuck against Aqua Pennsylvania, Inc., at Docket No. C-2019-3011822 is hereby withdrawn.
3. That the Secretary Bureau's mark the Complaint at Docket No. C-2019-3011822 as closed.

Date: September 14, 2020

/s/  
Dennis J. Buckley  
Administrative Law Judge