

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

NetSpeed LLC	:	
	:	
v.	:	C-2020-3020212
	:	
Duquesne Light Company	:	

RECOMMENDED DECISION

Before
Steven K. Haas
Administrative Law Judge

INTRODUCTION

This decision recommends that the Complainant’s petition to withdraw its formal complaint be granted because it is in the public interest to do so and there are no objections to the request. The Commission must act in this matter no later than February 27, 2021.

HISTORY OF THE PROCEEDING

On June 2, 2020, NetSpeed LLC (NetSpeed) filed a formal complaint against Duquesne Light Company (Duquesne) with the Pennsylvania Public Utility Commission (Commission) in which it challenged certain pole attachment permitting and fee practices imposed by Duquesne associated with the attachment of NetSpeed facilities to poles owned by Duquesne.

On July 1, 2020, Duquesne filed an answer and new matter in response to NetSpeed’s formal complaint. In its answer, Duquesne denied the material allegations in the complaint. On July 17, 2020, NetSpeed filed an answer to Duquesne’s new matter.

A telephonic prehearing conference was held on July 20, 2020. Following the prehearing conference, a scheduling order was issued which established a litigation schedule and modified certain Commission discovery regulations. During the prehearing conference, the parties confirmed their willingness to participate in mediation sessions with a Commission Mediator.

Extensive discovery was conducted by the parties and several mediation sessions were held with Commission Mediator Matthew Homsher, Esquire. The parties were unable to reach a settlement. Subsequently, on August 19, 2020, NetSpeed filed a Motion for Stay of Proceeding and Petition for Leave to Withdraw Complaint. On August 20, 2020, Duquesne filed a letter with the Commission in which it stated that it does not oppose NetSpeed's Motion for Stay of Proceeding and Petition for Leave to Withdraw Complaint.

The record in this case closed on August 20, 2020 when Duquesne indicated it did not object to NetSpeed's petition to withdraw its complaint. By this decision, I recommend that NetSpeed's petition be granted because it is in the public interest to grant it and there is no objection to it.

FINDINGS OF FACT

1. On June 2, 2020, the Complainant, NetSpeed LLC, filed a formal complaint with the Pennsylvania Public Utility Commission against Duquesne Light Company.
2. On July 1, 2020, Duquesne filed an answer and new matter to NetSpeed's complaint.
3. On July 17, 2020, NetSpeed filed an answer to Duquesne's new matter.
4. A telephonic prehearing conference was held in this proceeding on Monday, July 20, 2020, during which a litigation schedule was established and modifications to the Commission's discovery regulations were agreed upon.

5. Several mediation sessions were held with the parties and Commission Mediator Matthew Homsher, but the parties were unable to reach a settlement in this proceeding.

6. On August 19, 2020, NetSpeed filed a Motion for Stay of Proceeding and Petition for Leave to Withdraw Complaint. In its motion, NetSpeed requested that the deadlines established in the proceeding be stayed pending a decision on its Petition for Leave to Withdraw Complaint. In its petition, NetSpeed requested permission to withdraw its complaint in order to better conserve its resources for the provision of service to the public.

7. On August 20, 2020, Duquesne filed a letter with the Commission in which it stated that it has does not oppose NetSpeed's Motion for Stay or Proceeding and Petition for Leave to Withdraw Complaint.

DISCUSSION

The Commission's Rules of Practice and Procedure at 52 Pa.Code § 5.94 permit parties to withdraw pleadings in contested proceedings. The provision at 52 Pa.Code § 5.94(a) allows a party to request permission to withdraw a pleading by filing 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. 52 Pa.Code § 5.94(a).

In its complaint, NetSpeed alleges that Duquesne violated various federal and state laws and regulations related to the terms and conditions under which it offers space on its poles to NetSpeed for the placement of NetSpeed's facilities. As noted, Duquesne denied the material allegations in the NetSpeed's complaint. There are no other parties to this proceeding and none of Pennsylvania's statutory advocates (e.g. the Office of Consumer Advocate and the Office of Small Business Advocate) intervened on behalf of their respective constituents.

The complaint involves only the issue of the specific terms and conditions of service offered by Duquesne to NetSpeed for the placement of NetSpeed's facilities on poles owned by Duquesne. NetSpeed filed its complaint solely against Duquesne. There are no other parties in this case. Consequently, the legality of the terms and conditions under which Duquesne offers space on its poles to any other companies is not at issue here. No other companies or entities would be impacted by the outcome of this proceeding. Additionally, as noted, no objections have been raised in response to the filing of NetSpeed's motion. Since this is an individual complaint case, there will be no adverse impact on the public interest in granting the Complainant's petition to withdraw its complaint. It is not in the public interest to require NetSpeed to continue to litigate a complaint it no longer wishes to pursue.

Having reviewed the petition to withdraw, any objections to the request and the public interest, I recommend that NetSpeed's petition for leave to withdraw its complaint be granted. Granting the petition to withdraw will terminate the litigation, saving the parties the costs in time and money they would otherwise incur litigating the proceeding. Granting the petition to withdraw will not adversely impact the public interest and will conserve administrative hearing resources.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of 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 contested proceedings 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(a).

4. Granting the Complainant's petition to withdraw its complaint is in the public interest.

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the petition of NetSpeed LLC for leave to withdraw its formal complaint against Duquesne Light Company at Docket No. C-2020-3020212 be granted.
2. That the formal complaint filed by NetSpeed LLC against Duquesne Light Company at Docket No. C-2020-3020212 be withdrawn.
3. That the proceeding at Docket No. C-2020-3020212 be marked closed.

Date: September 16, 2020

/s/
Steven K. Haas
Administrative Law Judge