

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

National Railroad Passenger Corporation	:	
	:	
v.	:	C-2019-3010398
	:	
PPL Electric Utilities Corporation	:	

INITIAL DECISION

Before
Joel H. Cheskis
Deputy Chief Administrative Law Judge

INTRODUCTION

This decision grants a petition to withdraw a complaint filed by a customer of an electric distribution company who averred that various aspects of the rates, terms and conditions of service the company provides to the customer are unjust and unreasonable and requested a refund. The petition to withdraw is granted because it is in the public interest and there is no objection to it.

HISTORY OF THE PROCEEDING

On May 30, 2019, the National Railroad Passenger Corporation (Amtrak) filed with the Pennsylvania Public Utility Commission (Commission) a formal complaint against PPL Electric Utility Corporation (PPL or the company), docket number C-2019-3010398. In its complaint, Amtrak provided an extensive statement of facts and six legal arguments. Amtrak averred that 1) all PPL related transmission charges to Amtrak are unjust and unreasonable because PPL does not provide transmission service to Amtrak consistent with the manner in which Amtrak is being billed, 2) PPL violates Commission-jurisdictional tariffs by subjecting

Amtrak to transmission charges at Conestoga when no basis exists for such charges, 3) PPL's method of assessing transmission charges against Amtrak is unduly discriminatory in violation of the Public Utility Code, 4) the Commission has authority to provide relief to Amtrak, 5) Amtrak has a right to its own data, and 6) PPL must credit or refund unjust and unreasonable transmission charges to Amtrak that are inconsistent with tariff provisions. Amtrak attached to its complaint substantial exhibits in support of its position.

In response to Amtrak's complaint, PPL filed an answer and new matter on June 27, 2019. In its answer, PPL admitted or denied the various averments Amtrak made in its complaint. In particular, PPL admitted that it provides information that permits electric generation suppliers (EGSs) to serve retail customers and receive necessary transmission services pursuant to its Commission-approved tariff. PPL denied many of Amtrak's other averments regarding how it receives its electric service from Constellation New Energy, Inc. (CNE), an EGS, noting that it lacks sufficient information to admit or deny the averments. In its new matter, which was accompanied by a notice to plead, PPL averred that Amtrak did not pay PPL for retail transmission service during the period relevant to the complaint but that Amtrak received retail transmission service from, and paid, CNE. PPL also argued that Amtrak's request for relief in the form of a refund is really a claim for damages which the Commission does not have authority to award. PPL concluded that Amtrak's complaint should be denied.

Also on June 27, 2019, PPL filed five preliminary objections in response to Amtrak's complaint. On July 8, 2019, Amtrak filed an answer to PPL's preliminary objections and on July 17, 2019, filed an answer to PPL's new matter. PPL's preliminary objections were denied via order dated August 14, 2019.

On July 15, 2019, a hearing notice was issued establishing an in-person hearing for this matter for Thursday, August 29, 2019 at 10:00 in hearing room 4 of the Commonwealth Keystone Building in Harrisburg and assigning me as the presiding officer. Upon request of the parties, the in-person hearing was changed to an initial prehearing conference by hearing type change notice dated July 18, 2019. A prehearing conference order was issued on July 19, 2019 setting forth various rules that would govern the prehearing conference.

The prehearing conference convened on August 29, 2019, as scheduled. Pamela Polachek, Esquire and Matthew Garber, Esquire, appeared on behalf of Amtrak and Anthony Kanagy, Esquire, Lindsay Berkstresser, Esquire and Dave MacGregor, Esquire appeared on behalf of PPL. A scheduling order was issued on August 29, 2019 memorializing various matters agreed to in the prehearing conference. In particular, the parties discussed a potential procedural schedule for this matter and indicated that a formal schedule should not be established until after the Federal Energy Regulatory Commission (FERC) has concluded a similar proceeding that is currently pending before it.

Subsequently, various matters occurred, including discovery disputes and various continuances of the further prehearing conference while awaiting action from FERC.

On July 1, 2020, a further prehearing conference was held. Pamela Polacek, Esquire, again appeared on behalf of Amtrak. Anthony Kanagy, Esquire and Lindsay Berkstresser, Esquire, again appeared on behalf of PPL. During the conference, the parties indicated that the FERC had recently issued an order in response to the complaint filed by Amtrak. As a result, the parties requested that PPL be given the opportunity in this proceeding to file a preliminary motion by July 31, 2020 and that Amtrak be able to respond to that preliminary motion by August 31, 2020. On July 1, 2020, a second scheduling order was issued memorializing the agreements reached at the further prehearing conference.

Pursuant to the second scheduling order, on July 31, 2020, PPL filed a motion for summary judgment. In its motion, which was accompanied by a notice to plead, PPL argued that the Commission's jurisdiction over the matters complained of has been preempted by FERC and that FERC has decided all issues in the complaint. PPL further argued, among other things, that Amtrak is barred by the doctrine of *res judicata* and collateral estopped from litigating its case before the Commission now that FERC has ruled on its complaint. PPL also argued that the Commission does not have jurisdiction over Amtrak's supply contract for transmission and generation service from CNE. PPL concluded its motion by arguing that the motion should be granted and the complaint should be dismissed.

On August 13, 2020, Amtrak filed a petition to withdraw its complaint. In its petition, Amtrak stated that it filed complaints against PPL at both the Commission and FERC because both commissions have authority and jurisdiction to adjudicate the subject matter of the complaints and neither commission has exclusive or primary jurisdiction. Amtrak noted that FERC issued an order denying Amtrak's complaint on June 18, 2020 but that Amtrak filed a request for a rehearing of the June 18th Order wherein Amtrak also requested that FERC clarify its jurisdiction over the matter.

Amtrak added that granting its petition to withdraw is in the public interest because it promotes administrative comity and conserves Commission resources and the parties' resources. Amtrak concluded that it withdraws its complaint in good faith in light of FERC's recent order and its indication that FERC has jurisdiction over the issues raised in Amtrak's complaint. Therefore, Amtrak petitioned to withdraw its complaint filed before this Commission without prejudice to save resources and focus its efforts on prosecuting the FERC complaint.

On August 31, 2020, Amtrak filed an answer to PPL's motion for summary judgment. In its answer, Amtrak argued that the motion for summary judgment should be dismissed as moot because Amtrak has subsequently filed a petition to withdraw its complaint. Amtrak reiterated much of what it stated in its petition to withdraw and noted that PPL has not responded to the petition. Amtrak noted that there is no case or controversy for the Commission to adjudicate at this time. Amtrak added that if its unopposed petition to withdraw its complaint is denied, PPL's motion for summary judgment is no longer moot and requests the opportunity to supplement its answer at that time.

On September 1, 2020, PPL filed a letter indicating that it does not object to Amtrak's petition to withdraw its complaint and is withdrawing its motion for summary judgment.

The record in this case closed on September 1, 2020 when PPL indicated that it did not object to Amtrak's petition to withdraw. As discussed below, Amtrak's petition to withdraw will be granted because it is in the public interest and there is no opposition to it.

FINDINGS OF FACT

1. The complainant in this case is the National Railroad Passenger Corporation, also known as Amtrak.
2. The respondent in this case is PPL Electric Utilities Corporation.
3. On May 30, 2019, Amtrak filed a complaint against PPL asking the Commission to, among other things, determine that the retail transmission charges assessed to Amtrak by PPL have been and continue to be unjust, unreasonable and unduly discriminatory.
4. Also on May 30, 2019, Amtrak filed a complaint against PPL with FERC alleging that the rates Amtrak is being charged for transmission service through PPL and the PJM Interconnection, LLC, are unjust, unreasonable, and unduly discriminatory in violation of the Federal Power Act.
5. On June 18, 2020, FERC issued an order denying Amtrak's complaint.
6. On July 20, 2020, Amtrak filed with FERC a request for rehearing of the June 18, 2020, in part requesting that FERC clarify that its jurisdiction over the calculation and application of the Network Service Peak Load is current.
7. On August 13, 2020, Amtrak filed a petition to withdraw its complaint indicating that it wishes to focus its efforts on obtaining relief by further prosecuting the complaint it filed at FERC.
8. No objections were filed in response to Amtrak's petition to withdraw.

DISCUSSION

Section 5.94(a) of the Commission's regulations provides that 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 other parties. 52 Pa.Code § 5.94(a). This section further provides that the petition must set forth the reasons for the withdrawal and that a party may object to the petition within 10 days. Id. Finally, this section also provides that, 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. Id.

In this case, Amtrak noted in its petition that it filed complaints both at the Commission and FERC because it believed both commissions have jurisdiction and authority to adjudicate the subject matter of the complaint and neither commission has exclusive or primary jurisdiction. Amtrak further noted that FERC issued an order on Amtrak's complaint on June 18, 2020, and Amtrak has requested rehearing of this order. In its request for rehearing, Amtrak requested that FERC clarify that its jurisdiction over the matters complained of in the complaint is current. Amtrak added that, because FERC has now issued an order on Amtrak's complaint, Amtrak desires to focus its efforts on obtaining rate relief by further prosecuting the complaint it filed at FERC. Amtrak added that withdrawing its complaint at the Commission will promote administrative comity and conserve both the Commission's and the parties' resources. Amtrak noted that there is no objection to its petition.

Amtrak's petition to withdraw its complaint will be granted because it is in the public interest and there is no objection to it. It is reasonable that Amtrak wishes to withdraw its formal complaint filed at the Commission to focus its efforts on the proceeding at FERC. Although FERC has issued an order denying the complaint, Amtrak has asked for a rehearing and believes that FERC's order denying the complaint indicates that FERC has jurisdiction over the matters complained. Therefore, Amtrak wishes to focus its efforts on obtaining relief by further prosecuting its complaint filed at FERC. Such actions are reasonable and warrant granting Amtrak's petition.

To the extent that Amtrak believes that its efforts in pursuing the matters complained of are best focused at FERC, it should have the opportunity to do so without having to expend efforts to pursue its complaint at the Commission. In particular, PPL filed a motion for summary judgment that Amtrak would have to rebut if it were to pursue its complaint filed at the Commission. While Amtrak did file an answer to PPL's motion for summary judgment, the answer stated that PPL's motion was moot now that Amtrak seeks to withdraw its complaint, but reserved its right to supplement its answer to the extent it needs to address why PPL's motion for summary judgment should be denied in more detail in the future. Nonetheless, at this time, if Amtrak desires to focus its litigation efforts at FERC, and not at the Commission, it is reasonable and in the public interest to allow it to do so and grant its petition to withdraw. Amtrak's petition is also in the public interest because the complaint pertains to PPL rates that apply solely to Amtrak and, therefore, no other customers of PPL would be harmed if Amtrak did not pursue its complaint at this Commission.

In addition, as noted, there are no objections to Amtrak's petition to withdraw.

As such, all elements of consideration of the request to withdraw the complaint have been considered pursuant to Section 5.94 of the Commission's regulations. Such consideration warrants granting the request to withdraw. Therefore, Amtrak's petition to withdraw its complaint against PPL will be granted.

CONCLUSIONS OF LAW

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

2. 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 other parties. 52 Pa.Code § 5.94(a).

3. A petition to withdraw a pleading in a contested proceeding must set forth the reasons for the withdrawal and that a party may object to the petition within 10 days. 52 Pa.Code § 5.94(a).

4. After considering a petition to withdraw a pleading in a contested proceeding, any 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).

5. It is in the public interest to allow Amtrak to withdraw its complaint.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the request to withdraw its complaint filed by National Railroad Passenger Corporation against PPL Electric Utilities Corporation, at docket number C-2019-3010398 is hereby granted.

2. That the formal complaint filed by National Railroad Passenger Corporation against PPL Electric Utilities Corporation, at docket number C-2019-3010398, and dated May 30, 2019, is withdrawn.

3. That this matter be marked closed.

Date: September 21, 2020

_____/s/
Joel H. Cheskis
Deputy Chief Administrative Law Judge