

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Eric Schiller	:	
	:	
v.	:	C-2021-3026697
	:	
The Pittsburgh Water and Sewer Authority	:	

INITIAL DECISION

Before
Conrad A. Johnson
Administrative Law Judge

INTRODUCTION

This decision grants Complainant’s petition to withdraw his Complaint and deems Respondent’s preliminary objections moot. The petition is granted because there were no objections thereto, and granting the withdrawal is in the public interest.

HISTORY OF THE PROCEEDING

On May 27, 2021, Complainant Eric Schiller (Complainant or Mr. Schiller) filed a Complaint with the Pennsylvania Public Utility Commission (Commission) against The Pittsburgh Water and Sewer Authority (Respondent or PWSA) concerning his wastewater service. Complainant alleged he was billed for treatment of one-time, outside water use (8,000 gallons) without receiving sewage treatment service. Complaint ¶ 4. For relief, Complainant requested that the Commission order Respondent to do any of the following:

- 1) Only charge for H₂O that is actually treated by the company.

- 2) Provide outside H₂O credit meters at free or reduced costs to residents.
- 3) Have field investigators with portable credit meters to measure H₂O usage based on scheduling appointments.
- 4) Devise self-installed credit meters that can be “rented” by owner for 1-time usage event.
- 5) Add subcontractor wastewater treatment entities to the PUC regulatory body, thereby eliminating PA-American H₂O loophole.
- 6) Revise or review company’s wastewater tariff policy to find equitable plan for portable pool owners who experience this dilemma each season!

Complaint ¶ 5.

On July 13, 2021, PWSA filed an Answer to the Complaint and Preliminary Objections, attached with a Notice to Plead. In its Answer, in relevant part, PWSA asserted as follows:

3. It is admitted that PWSA provides wastewater service to the Complainant. The Complainant’s bill also includes sewage treatment charges from ALCOSAN, which are established by ALCOSAN and paid by PWSA to ALCOSAN pursuant to PWSA’s tariff. Additionally, the property receives water service from the [Pennsylvania-American Water Company] PAWC.

4. (a) It is admitted that the Complainant was billed for the treatment of water by ALCOSAN. By way of further answer, PWSA includes ALCOSAN charges on its bill pursuant to a Commission-approved tariff provision, but it has no control over ALCOSAN charges. [footnote omitted] In addition, the charges billed to the Complainant were based on actual meter readings supplied by PAWC.

....

(c) On August 1, 2020, Mr. Schiller called the Dispatch Department requesting to receive credit for water he used to fill

his swimming pool, and the Dispatcher explained that ALCOSAN does not issue credits for water that is used to fill a pool. Mr. Schiller questioned PWSA's role in billing for water that was used, and the Dispatcher explained how PWSA bills for sewage treatment and provided Mr. Schiller with the phone number for ALCOSAN.

5. It is denied that the Complainant is entitled to relief. The Formal Complaint fails to allege that PWSA has violated the Public Utility Code or Commission regulations. PWSA charged the Complainant for consumption based on actual meter readings supplied by PAWC as detailed in PWSA's Water and Wastewater Tariffs. Thus, the Complainant was accurately billed for consumption at the subject property.

Answer ¶¶ 3, 4(a), 4(c) and 5.

In its Preliminary Objections (PO), Respondent argued in part as follows:

12. The only allegation in the Complaint relates to ALCOSAN sewage treatment charges, which PWSA includes on its bills in accordance with its tariff. The rates for wastewater treatment are established by ALCOSAN and are not regulated by the Commission. [footnote omitted]

13. Since the Commission does not regulate ALCOSAN charges, which PWSA merely passes through on its bills, the Commission has no jurisdiction over the issues raised by this Complaint.

PO ¶¶ 12-13.

The Respondent requested that the Commission grant the PO and dismiss the Complaint. Complainant did not file an answer to the PO within 10 days of service, as provided for under the Code.¹

¹ "An answer to a preliminary objection may be filed within 10 days of service." 52 Pa. Code § 5.101(f)(1).

By Notice dated August 17, 2021, the parties were informed that the case was scheduled before me for a hearing on September 28, 2021. On September 22, 2021, Mr. Schiller requested a hearing continuance to which PWSA did not have any objections. Consequently, the hearing was rescheduled for October 15, 2021.

By email to me on October 14, 2021, with a copy to counsel for PWSA, Mr. Schiller stated the following:

As of today October 14, 2020, Eric Schiller would like to request a formal withdrawal for case file C-2021-3026697. Apologies for the late notice, I am currently not due to arrive in Pittsburgh until early afternoon tomorrow and will only have intermittent internet access in route to the destination. Other mitigating circumstances apply here as well, but I feel the case will be difficult based on the tariff laws in PA.

After due consideration, I informed the parties, via email on October 14, 2021, that the hearing would be cancelled, and Mr. Schiller's email would be treated as a petition to withdraw his complaint under 52 Pa. Code § 5.94(a).² By email on October 14, 2021, counsel for PWSA, Karen O. Moury, Esquire, informed me and Mr. Schiller that PWSA did not object to the withdrawal request.

For the reasons set forth below, Complainant's petition to withdraw his Complaint will be granted, and Respondent's PO will be deemed moot.

FINDINGS OF FACT

1. Complainant Eric Schiller is a wastewater customer of Respondent, The Pittsburgh Water and Sewer Authority.

² Although Complainant's email requesting a withdrawal of his complaint did not conform to the requirements of a formal petition, under Section 1.15(b) of the Commission's regulations, waiver of this requirement is permitted. Under Section 1.2, 52 Pa. Code § 1.2, a presiding officer at any stage of an action or proceeding may waive a requirement of a rule when necessary or appropriate if waiver does not adversely affect a substantive right of a party. Such were the circumstances in this case.

2. Respondent is a municipal authority created in 1984 and is responsible for producing and supplying water along with maintaining and operating the water and sewer infrastructure in Pittsburgh. Effective April 1, 2018, Respondent became subject to the jurisdiction of the Commission as a regulated public utility. *See* 66 Pa. C.S. §§ 3201-3209.

3. On May 27, 2021, Complainant filed a Complaint against Respondent.

4. On July 13, 2021, Respondent filed an Answer and Preliminary Objections to the Complaint.

5. On October 14, 2021, Complainant filed a request seeking to withdraw his Complaint.

6. Respondent did not object to Complainant's request to withdraw his Complaint.

DISCUSSION

Legal Standards

Section 5.94(a) of the Commission's regulations, in relevant part, provides as follows:

(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.

52 Pa. Code § 5.94(a).

Analysis

The filing of Mr. Schiller's Complaint and PWSA's Answer thereto constitutes a contested proceeding.³ Therefore Mr. Schiller's withdrawal petition must be considered under the provisions of Section 5.94(a), cited above. In his petition, Mr. Schiller indicates he wishes to withdraw his Complaint. He suggests he has determined it will be difficult to prevail on his Complaint because of PWSA's tariffs. Notably, Mr. Schiller did not file an answer to PWSA's PO which raises jurisdictional issues.

The Commission has no interest in mandating that Mr. Schiller continue litigation when he has indicated he does not wish to do so, and apparently, he has questioned the merits of his Complaint. Furthermore, Section 703(b) of the Public Utility Code, 66 Pa.C.S. § 703(b), 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, Mr. Schiller's questions the merits of his Complaint. Thus, proceeding to hearing would not be in the public interest. Granting Mr. Schiller's request to withdraw his Complaint will save the parties and the Commission the costs in time and money in litigating this matter to conclusion without impacting the public interest. Furthermore, PWSA did not object to the request to withdraw. Therefore, the petition will be granted in the ordering paragraphs below.

Concerning PWSA's preliminary objections, the granting of Mr. Schiller's withdrawal petition obviates a ruling on the objections. Therefore, in the ordering paragraphs below PWSA's preliminary objections will be deemed moot.

³ An adversarial or contested proceeding is defined as, "[a] proceeding initiated by a person in order to seek authority, approvals, tariff changes, enforcement, fines, remedies or other relief from the Commission which is contested by one or more other persons, and which will be decided on the basis of a formal record." 52 Pa. Code § 1.8.

CONCLUSIONS OF LAW

1. 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.

2. 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).

3. Section 703(b) of the Public Utility Code provides for dismissal of a complaint without a hearing, if in the Commission's opinion, a hearing is not necessary in the public interest. 66 Pa.C.S.A. § 703(b).

4. Granting Complainant's petition to withdraw his Complaint is in the public interest. 52 Pa. Code § 5.94(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That Complainant Eric Schiller's petition to withdraw his Complaint filed in the matter of Eric Schiller v. The Pittsburgh Water and Sewer Authority at Docket No. C-2021-3026697 is granted.

2. That the Complaint of Eric Schiller against The Pittsburgh Water and Sewer Authority at Docket No. C-2021-3026697 is hereby withdrawn.

