

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement	:	
	:	
v.	:	C-2019-3009656
	:	
Pocono Cab Company LLC t/a Pocono Cab	:	

INITIAL DECISION

Before
John M. Coogan
Administrative Law Judge

INTRODUCTION

This decision grants a Letter Petition for Leave to Withdraw Complaint (Petition) filed by the Bureau of Investigation and Enforcement (I&E) of the Pennsylvania Public Utility Commission (Commission or PUC) against Pocono Cab Company LLC t/a Pocono Cab (Pocono Cab). I&E’s Formal Complaint alleged Pocono Cab permitted its driver to operate a vehicle in passenger transportation service while under the influence of a controlled substance in violation of 52 Pa. Code § 29.507. I&E’s Petition states that it wishes to withdraw its Complaint because the driver in question is no longer employed by Pocono Cab. The Petition is granted because there were no objections filed in response to it and it is in the public interest to do so.

HISTORY OF THE PROCEEDING

On August 30, 2019, I&E filed a Formal Complaint against Pocono Cab with the Commission. The Formal Complaint was docketed at C-2019-3009656. In the Formal Complaint, I&E alleged that police stopped a driver for Pocono Cab on February 26, 2019, and that the driver was taken into custody, submitted to chemical testing, and a blood toxicology

report showed that the driver had detectable quantities of cannabinoids in his system. Therefore, I&E alleged that Pocono Cab permitted a driver to operate a vehicle while under the influence of a controlled substance, violating 52 Pa. Code § 29.407. I&E's Formal Complaint requested that Pocono Cab pay a penalty of \$500 for this alleged violation.

On September 12, 2019, Pocono Cab filed an Answer with New Matter in response to I&E's Formal Complaint. In its Answer, Pocono Cab admitted or denied the various averments made by I&E in its Formal Complaint. In particular, Pocono Cab denied it had been informed of any incident involving any of its vehicles or drivers, or that the blood toxicology report indicated that its driver had detectable quantities of cannabinoids in his system. In its New Matter, Pocono Cab asserted that mere allegation of a driver operating under the influence is insufficient to penalize Pocono Cab. Additionally, Pocono Cab's New Matter stated it is not within the expertise of the PUC to analyze a toxicology report; the complaint does not establish that the individual was operating a vehicle; Pocono Cab did not have knowledge of the incident; the driver was not under the influence of a controlled substance when he began his shift; the driver was not carrying a fare when the alleged incident occurred; the driver did not have the permission of Pocono Cab to use a controlled substance; and it is against the policy of Pocono Cab to use a controlled substance. On September 26, 2019, I&E filed a Reply to New Matter.

On November 8, 2019, I&E filed an Amended Formal Complaint against Pocono Cab with the Commission. I&E's Amended Formal Complaint alleged that Pocono Cab violated 52 Pa. Code § 29.507 when its driver operated a vehicle in passenger transportation service while under the influence of a controlled substance. I&E requested that Pocono Cab be ordered to pay a civil penalty of \$500 for the alleged violation, and that the Commission order any other remedy that it may deem appropriate.

On November 28, 2019, Pocono Cab filed with the Commission an Answer to I&E's Amended Formal Complaint. In its answer, Pocono Cab admitted or denied the various averments made by I&E in its Amended Formal Complaint. In particular, Pocono Cab asserts that the Commission does not possess authority to penalize Pocono Cab for alleged criminal activities by an independent contractor without the knowledge or approval of Pocono Cab and

that the driver was not performing any transportation of passengers at the time of the alleged incident.

On February 24, 2022, I&E filed a Letter Petition for Leave to Withdraw Complaint (Petition). I&E stated it was withdrawing its Formal Complaint because further investigation revealed that the driver in question is no longer employed by Pocono Cab. I&E's Petition was served on Pocono Cab. I&E requested that, if no party objects within 10 days of service of this letter, this case should be marked closed.

On March 23, 2022, the Commission issued a motion judge assignment notice informing the parties that I had been assigned to resolve any issues which may arise during the preliminary phase of this proceeding.

No objections have been received in response to the Petition.

The record in this case closed on March 23, 2022 when the motion judge assignment notice was issued. As discussed below, I&E's Petition will be granted because it is in the public interest and there is no objection to it.

FINDINGS OF FACT

1. The Complainant in this case is the Commission's Bureau of Investigation and Enforcement.
2. The Respondent in this case is Pocono Cab Company LLC t/a Pocono Cab.
3. On August 30, 2019, I&E filed a Formal Complaint against Pocono Cab.
4. On September 12, 2019, Pocono Cab filed an Answer with New Matter in response to I&E's Formal Complaint.
5. On September 26, 2019, I&E filed a Reply to Pocono Cab's New Matter.

6. On November 8, 2019, I&E filed an Amended Formal Complaint against Pocono Cab.
7. On November 27, 2019, Pocono Cab filed an Answer to I&E's Amended Formal Complaint.
8. This proceeding is contested because Pocono Cab filed an Answer and New Matter to I&E's Formal Complaint and Answer to I&E's Amended Formal Complaint.
9. On February 24, 2022, I&E filed a Letter Petition for Leave to Withdraw Complaint (Petition).
10. I&E's Petition indicated a copy of the Petition was served on Pocono Cab on February 24, 2022.
11. No objections were filed in response to I&E's Letter Petition for Leave to Withdraw Complaint.

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). Section 5.94 further provides that the petition must set forth the reasons for the withdrawal and that a party may object to the petition to withdraw within 10 days. *Id.* Finally, Section 5.94 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 its Petition, I&E stated it was withdrawing its Complaint because further investigation revealed that the driver in question is no longer employed by Pocono Cab. I&E's Petition was served on Pocono Cab. I&E requested that, if no party objects within 10 days of

service of this letter, this case should be marked closed. Pocono Cab has not filed any objections to I&E's Petition.

A complaint that a driver operated a vehicle in passenger transportation service while under the influence of a controlled substance is a serious allegation, and represents a possible violation of Commission regulations. However, there is no record to conclude that Pocono Cab violated the Commission's regulations and requiring the parties to continue to litigate this matter when the parties do not wish to pursue this matter any further is not in the public interest. It is not unreasonable that a party who has filed a formal complaint will subsequently decide that litigation is not the appropriate path to pursue. Here, I&E's Petition explains it is withdrawing its Complaint because the driver in question is no longer employed by Pocono Cab.¹ In addition, the Petition is unopposed, and granting the Petition will save the Commission resources as well. Therefore, all elements of Section 5.94 of the Commission's regulations have been considered, and I&E's Petition will be granted. *Id.*

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).

¹ Although I&E only refers to withdrawing its "Complaint", I interpret I&E's request to include withdrawing both its Formal Complaint and the Amended Formal Complaint. To the extent not clearly requesting withdrawal of both complaints was a procedural error, I find that allowing both complaints to be withdrawn does not affect the substantive rights of the parties. 52 Pa. Code § 1.2(a). Both complaints largely included the same allegations, and Pocono Cab provided similar answers to both complaints and did not object to I&E's Petition.

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. The Commission or presiding officer at any stage of an action or proceeding may disregard an error or defect of procedure which does not affect the substantive rights of the parties. 52 Pa. Code § 1.2(a).

6. It is in the public interest to allow the Bureau of Investigation and Enforcement to withdraw their Formal Complaint. 52 Pa. Code § 5.94(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Letter Petition for Leave to Withdraw Complaint filed by the Bureau of Investigation and Enforcement on February 24, 2022 at docket number C-2019-3009656 is hereby granted.

2. That the Formal Complaint filed on August 30, 2019 and the Amended Formal Complaint filed on November 8, 2019 by the Bureau of Investigation and Enforcement against the Pocono Cab Company LLC t/a Pocono Cab at Docket Number C-2019-3009656 is withdrawn.

3. That the Secretary's Bureau shall mark docket number C-2019-3009656 as closed.

Date: April 19, 2022

/s/
John M. Coogan
Administrative Law Judge