

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

|                             |   |                |
|-----------------------------|---|----------------|
| Alexander David Burkholder  | : |                |
|                             | : |                |
| v.                          | : | C-2021-3029823 |
|                             | : |                |
| Metropolitan Edison Company | : |                |

**INITIAL DECISION**

Before  
Arlene Ashton  
Administrative Law Judge

**INTRODUCTION**

Alexander David Burkholder (Mr. Burkholder) filed a formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (PUC or Commission) against Metropolitan Edison Company (Company or Respondent). Mr. Burkholder determined it was appropriate to withdraw the Complaint. This decision grants the withdrawal requested by Mr. Burkholder because it is unopposed and in the public interest to do so.

**HISTORY OF THE PROCEEDING**

On November 15, 2021, Mr. Burkholder filed the Complaint regarding electrical service provided to Burkholder Capital at 3094 North Reading Road, Reinholds, PA 17569 (Service Location). In the Complaint, Mr. Burkholder indicated that during a power outage service provided by the Respondent caused the “neutral line” to become energized, resulting in \$4,000 of equipment damage. He further indicated that he contacted the Respondent and requested that the Company “cover some of the cost” and it refused to do so. As relief, the Complainant requested that the Respondent be “penalized for providing an unsafe service.”

The Company filed an Answer and New Matter on December 28, 2021, in which it acknowledged that it provided non-residential service to Burkholder Capital at the Service Location. Also on December 28, 2021, the Company filed Preliminary Objections to the Complaint, endorsed with a Notice to Plead. Mr. Burkholder did not file a response to the Company's Preliminary Objections.

A Call-in Telephone Hearing Notice (Hearing Notice) was issued on January 25, 2022, scheduling an initial call-in telephone hearing on March 22, 2022. The Hearing Notice assigned the Complaint to the undersigned Administrative Law Judge. The Hearing Notice included information concerning representation of parties at the hearing and the requirement that while individuals may represent themselves, all other parties must be represented by counsel at the hearing.

A Prehearing Order dated February 3, 2022, was served upon the parties providing the procedural rules and confirming the scheduled call-in telephonic hearing for March 22, 2022. Paragraph 6 of the Prehearing Order specified that:

If you are an individual, you may represent yourself or you may have an attorney represent you. **All others, including a partnership, corporation, trust, association, or governmental agency or subdivision, must be represented an attorney licensed to practice law in Pennsylvania, or admitted *pro hac vice*.<sup>1</sup> And, unless you are an attorney, you may not represent someone else.**

(emphasis and note in original).

On February 3, 2022, I issued an Interim Order Denying the Respondent's Preliminary Objections (Interim Order). In the Interim Order, I noted that it appeared that the Complaint related to service provided to Burkholder Capital, referenced Paragraph 6 of the Prehearing Order and directed that "if Burkholder Capital LLC is the actual Complainant in this

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<sup>1</sup> 52 Pa. Code §§ 1.21 & 1.22.

matter, it must have an attorney enter an appearance to represent it on or before March 18, 2022.”

In the Complaint, Mr. Burkholder indicated that he was represented by Tim Engler, Esquire. However, on March 16, 2022, attorney Engler sent an email to my office, Mr. Burkholder and Mr. Conor O’Brien, a member of the firm representing the Company, stating that he was not representing Complainant and explained:

Alexander Burkholder filed a Formal Complaint in his individual capacity as a result of his interactions with, and the response of, the Metropolitan Edison Company for the August 2021 power outage in question. I have not been retained to represent Mr. Burkholder and I have not entered my appearance in this matter. . . . It is my understanding that Mr. Burkholder will be participating in the upcoming telephonic hearing. All future communications can be sent directly to Alexander Burkholder without copying me.

On March 22, 2022, the telephonic hearing convened as scheduled. Mr. Burkholder appeared at the hearing without counsel. Counsel for the Respondent, Margaret A. Morris, Esquire, was also present. After some discussion, Mr. Burkholder indicated that he wished to withdraw the Complaint. Subsequently, on the same day, he submitted an email (Withdrawal Email) to my office, copying counsel to the Respondent and confirming in writing his request to withdraw the Complaint. Counsel to the Respondent indicated that she had no objection to the withdrawal, and confirmed the same via a letter dated March 22, 2022, filed with the Commission and served on Mr. Burkholder.

The transcript for the telephonic hearing consists of 27 pages and was filed on April 14, 2022, at which time, the record in this matter was closed.

This matter is ripe for decision.

## FINDINGS OF FACT

1. On November 15, 2021, Complainant, Mr. Burkholder, filed a Complaint regarding electrical service provided to Burkholder Capital at the Service Location.

2. Metropolitan Edison Company, a Commission jurisdictional electric distribution company, is the Respondent.

3. On March 22, 2022, a telephonic hearing convened in this case.

4. At the hearing, Mr. Burkholder verbally indicated that he wished to withdraw the Complaint. Tr. 16-18.

5. The Respondent did not object to the withdrawal requested by Mr. Burkholder. Tr. 18.

6. On March 22, 2022, Mr. Burkholder confirmed in writing that he wished to withdraw the Complaint.

7. On March 22, 2022, via letter filed with the Commission, the Respondent confirmed in writing that it had no objection to the withdrawal of the Complaint by Mr. Burkholder.

## DISCUSSION

This matter was a contested proceeding to resolve the Complaint filed by Mr. Burkholder regarding electrical service provided to Burkholder Capital at the Service Location.

At the March 22, 2022 hearing, Mr. Burkholder stated that he wished to withdraw his Complaint and he confirmed this request in a written email.

Section 1.2 of the Commission regulations allows for a presiding officer to disregard an error or defect of procedure which does not affect the substantive rights of the parties and provides in relevant part:

§ 1.2. Liberal construction

(a) This subpart shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which it is applicable. 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.

\* \* \*

(c) The Commission or presiding officer at any stage of an action or proceeding may waive a requirement of this subpart when necessary or appropriate if the waiver does not adversely affect a substantive right of a party.

(d) These liberal construction provisions apply with particularity in proceedings involving pro se litigants.

52 Pa. Code § 1.2.(a), (c)-(d).

Commission regulations address the withdrawal of pleadings in a contested proceeding at Section 5.94(a) which states:

§ 5.94. Withdrawal of 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). The Commission regulations define a “pleading” as follows: “[a]n application, **complaint**, petition, answer, motion, preliminary objection, protest, reply, order to show cause, new matter and reply to new matter or other similar document filed in a formal proceeding. 52 Pa. Code § 1.8 (emphasis added). Based on the definition for pleading, the instant Complaint is a pleading. *Id.*

The undersigned finds that Mr. Burkholder’s request, which was reduced to writing in the Withdrawal Email, although not formally written as a Petition for Leave to Withdraw, should be treated as such in accordance with 52 Pa. Code § 1.2(a), which allows for liberal construction to secure the just, speedy and inexpensive determination of action. Furthermore, the substance of Mr. Burkholder’s actions overrides any defect in the appropriate form of a pleading pursuant to 52 Pa. Code § 1.2(a). Also, Mr. Burkholder is representing himself in this proceeding and Section 1.2(d) of the Code affords liberal construction of the Commission’s regulations in proceedings particularly where a Complainant appears *pro se*.

It is noted that Mr. Burkholder performed this action at his own discretion. The Respondent’s failure to object to the withdrawal requested by the Complaint is also noteworthy.

Granting the withdrawal request will eliminate the need for litigation and save the parties any additional costs in time and money they would otherwise incur litigating the case. For all these reasons, I find that granting Mr. Burkholder’s request to withdraw his Complaint is in the public interest.

#### CONCLUSIONS OF LAW

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

2. The Commission's Rules of Practice and Procedure permit parties to withdraw pleadings in a contested proceeding by permission of the presiding officer or Commission. 52 Pa. Code § 5.94.

3. 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. 52 Pa. Code § 5.94(a).

4. A presiding officer or the Commission may disregard an error or defect of procedure or waive a requirement that does not adversely affect a substantive right of a party. 52 Pa. Code §§ 1.2(a),(c),(d).

5. The request by Mr. Burkholder for Leave to Withdraw the Complaint is reasonable and is in the public interest. 52 Pa. Code § 5.94.

ORDER

THEREFORE,

IT IS ORDERED;

1. That the Petition for Leave to Withdraw made by Alexander David Burkholder on March 22, 2022, regarding the formal Complaint filed by him against Metropolitan Edison Company at Docket No. C-2021-3029823 is granted.

2. The formal Complaint filed by Alexander David Burkholder against Metropolitan Edison Company at Docket No. C-2021-3029823 is withdrawn without prejudice.

3. That the Secretary's Bureau is to mark this matter closed.

Date: June 10, 2022

/s/  
Arlene Ashton  
Administrative Law Judge