

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Mohamed Diaby/Al Nur Pizza	:	
	:	
v.	:	C-2022-3030584
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Kailey B. Maguire
Special Agent

INTRODUCTION

This initial decision grants a petition to withdraw a complaint of a commercial gas service customer, as the public utility did not object to the request, and it is in the public interest to do so.

HISTORY OF THE PROCEEDING

On January 13, 2022, Mohamed Diaby/Al Nur Pizza¹ (Complainant) filed a formal complaint against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission).² In his complaint, Mr. Diaby averred PGW was threatening to shut of his service or had already shut off his service. Additionally, in his complaint, Mr. Diaby, requested a Commission-directed payment arrangement for a duration of 24 months or 36 months, if possible.

¹ Al Nur Pizza is a sole proprietorship owned by Mohamed Diaby.

² The complaint was served upon PGW on January 27, 2022.

On February 17, 2022, PGW filed an answer in response to the complaint asserting, *inter alia*, on December 13, 2021, it issued a termination notice for the gas service of Al Nur Pizza at 4842 Old York Road, Philadelphia, Pennsylvania (service address) and on January 25, 2022, it terminated the gas service at the service address due to non-payment, and denying all other material allegations in the complaint. PGW concluded its answer by requesting dismissal of the complaint.

On February 23, 2022, the Commission issued an Initial Call-In Telephonic Hearing Notice to the parties, establishing an initial telephonic hearing for March 30, 2022, at 10:00 a.m. and assigning the undersigned as Presiding Officer.³ On March 16, 2022, a Prehearing Order was issued which advised the parties of the procedures applicable to the hearing.

On March 22, 2022, counsel for PGW, via signed email, forwarded the undersigned an email from Complainant in which the Complainant had responded to the Prehearing Order sent via the Commission's eService system requesting to withdraw his complaint. In his email the Complainant requested the Commission "drop off my complaint case, the reason is I'm not in the location no more after PGW turn off my service 2 months [a]go." Within the email from Respondent, PGW's counsel informed the undersigned that it does not object to the Complainant's request to withdraw the complaint.⁴ A copy of the email correspondence was sent to the Secretary's Bureau to be filed in the above-captioned docket.

The record in this case closed on March 22, 2022, when PGW sent the forwarded email from the Complainant including its non-objection to the request to withdraw.

³ 52 Pa. Code § 56.174 provides for review by a special agent of any case in which the issue is solely the ability to pay.

⁴ Complainant's email communication is being treated as a Petition to Withdraw. *See*, 52 Pa. Code § 1.2(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 of defect of procedure which does not affect the substantive rights of the parties."). Thus, the Complainant's request to withdraw his Complaint, via responsive email, will be treated as a petition for leave to withdraw, as PGW was given an opportunity to respond to the request, its substantive rights were not affected.

FINDINGS OF FACT

1. Complainant is Mohamed Diaby, on behalf of Al Nur Pizza, as a sole proprietor.
2. Respondent is Philadelphia Gas Works.
3. Complainant receives commercial service at 4842 Old York Road, Philadelphia, PA (service address).
4. On January 13, 2022, Mr. Diaby/Al Nur Pizza filed a formal complaint against PGW averring PGW was threatening to shut of his service or had already shut off his service. Additionally, Mr. Diaby requested a Commission-directed payment arrangement.
5. On February 17, 2022, PGW filed an answer admitting or denying the various averments made in the complaint.
6. On February 23, 2020, a Call-In Telephonic Hearing Notice was issued, scheduling this matter for a telephonic hearing to be held on March 30, 2022, at 10:00 a.m.
7. On March 16, 2022, a Prehearing Order was issued which advised the parties of the procedures applicable to the hearing.
8. On March 22, 2022, counsel for PGW, via signed email, forwarded the undersigned an email from Complainant requesting to withdraw the complaint.
9. Complainant's March 22, 2022 email was sent by Complainant as a reply to the Prehearing Order served via the Commission's eService system.

10. In his March 22, 2022 email, Complainant requested to “drop off my complaint case, the reason is I’m not in the location no more after PGW turn off my service 2 months [a]go.”

11. PGW did not object to the Complainant’s request to withdraw his complaint.

DISCUSSION

The Complainant's email communication is being treated as a Petition to Withdraw. *See*, 52 Pa. Code § 1.2(a); *Ulishney v. West Penn Power*, C-2021-3024487 (Opinion and Order entered May 19, 2022) (construing complainant’s email correspondence as petition to withdraw). The petition for leave to withdraw the complaint will be granted because allowing Mr. Diaby/Al Nur Pizza to withdraw the complaint is in the public interest and there is no objection to it.

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 this case, after receipt of the Prehearing Order, Complainant via a reply email to the Commission’s eService system requested the Commission “drop off my complaint case, the reason is I’m not in the location no more after PGW turn off my service 2 months [a]go.” Complainant should not be required to pursue his complaint if he does not wish to do so. It is not in the public interest, or an efficient use of the Commission’s resources, to require Complainant to continue to litigate his complaint if he no longer wishes to do so. Further, as noted above, no objection was filed in response to the petition.

Therefore, granting the Complainant's petition for leave to withdraw his complaint is in the public interest. Furthermore, no objections have been filed in response to the petition. As a result, all elements of consideration of the petition to withdraw have been examined pursuant to Section 5.94 of the Commission's regulations. Such consideration warrants granting the request to withdraw. Therefore, Complainant's petition to withdraw his complaint 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. The Commission's regulations 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 of defect of procedure which does not affect the substantive rights of the parties. 52 Pa. Code § 1.2(a).

3. 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).

4. 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).

5. 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).

6. It is in the public interest to allow Complainant to withdrawal his complaint. 52 Pa. Code § 5.94(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Petition for Leave to Withdraw complaint filed by Mohamed Diaby/Al Nur Pizza dated March 22, 2022, at Docket Number C-2022-3030584 is hereby granted.
2. That the Formal Complaint filed by Mohamed Diaby/Al Nur Pizza against Philadelphia Gas Works at Docket Number C-2022-3030584 is hereby deemed withdrawn.
3. That this matter be marked closed.

Date: June 27, 2022

/s/
Kailey B. Maguire
Special Agent