

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Arthur Daly	:	
	:	C-2021-3026685
v.	:	
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Darlene Heep
Administrative Law Judge

INTRODUCTION

The Complainant, Arthur Daly, has submitted a request to withdraw his complaint. PECO does not oppose the Complainant’s request. This decision grants the Complainant’s request to withdraw the complaint because it is unopposed and is in the public interest.

HISTORY OF THE PROCEEDING

On June 10, 2021, Arthur Daly (“Mr. Daly” or “Complainant”) filed a Complaint with the Pennsylvania Public Utility Commission (“Commission”) against PECO Energy Company (“PECO” or “Respondent”). In the Complaint, Mr. Daly requested a payment agreement and alleged that his bills are incorrect. He contended that the lights and air conditioning at the service address are not working properly and that although he is a tenant, he is charged as a commercial customer.

In an Answer filed on July 1, 2021, PECO denied that bills sent to the Complainant were incorrect. PECO also averred that the Complainant previously litigated before the Commission the issues in the instant Complaint. According to PECO, the Complainant established four accounts for electric service at the service address under three residential accounts and a commercial public lighting account. PECO also stated in the Answer that in 2018, the Complainant made similar allegations in his formal Complaint at Docket Number F-2018-3004561, and that the matter was resolved with a payment agreement that the Complainant did not keep.

PECO further averred that in 2019, the Complainant filed a formal Complaint, Docket Number C-2021-3012947, with allegations identical to the instant claims. The Complainant did not appear for the hearing before Administrative Law Judge (“ALJ”) Angela Jones and, by Initial Decision dated September 16, 2020, ALJ Jones dismissed the Complaint at Docket Number C-2021-3012947 for lack of prosecution. By Final Order dated January 1, 2021, the Commission dismissed the matter with prejudice.

By Initial Call-In Telephone Hearing Notice dated July 22, 2021, a hearing was scheduled for October 12, 2021.

A Prehearing Order was issued on July 27, 2021, which advised the Complainant of the date and time of the hearing and the procedures to be followed.

On October 1, 2021, the Complainant submitted a written request for continuance and further requested that the matter be set more than 60 days from the date of the letter. PECO did not object and the continuance was granted.

A Rescheduled Telephonic Hearing Notice was issued on October 5, 2021, setting a hearing for December 16, 2021.

A Prehearing Order was issued on October 7, 2021, which advised the Complainant of the date and time of the hearing and the procedures to be followed.

On November 11, 2021, the Complainant requested a 60-day continuance for medical reasons and because he had applied for Emergency Medical and Utility Assistance. PECO did not object to the continuance and the request for continuance was granted.

On November 12, 2021, a Rescheduled Initial Telephonic Hearing Notice set the hearing for January 18, 2022.

A Prehearing Order was issued on November 22, 2021, which advised the Complainant of the date and time of the hearing and the procedures to be followed.

On January 6, 2022, PECO filed a Motion for Continuance due to PECO counsel having a conflicting appointment with the Commission.

On January 7, 2022, a Cancel/Reschedule Initial Call-In Telephonic Hearing Notice was issued setting a hearing for February 22, 2022.

A Prehearing Order was issued on January 10, 2022, which advised the Complainant of the date and time of the hearing and the procedures to be followed.

On February 21, 2022, the Complainant sent an email requesting a continuance of the hearing until May 2022 for medical reasons. No supporting medical documents were submitted. The parties were advised that the hearing would be held as scheduled.

The hearing set for February 22, 2022 convened as scheduled. Khadijah Scott, Esquire, appeared on behalf of PECO. Neither the Complainant nor a representative on his behalf was present.

Attorney Scott stated during the hearing that she had received a request from the Complainant for a continuance due to medical reasons. PECO did not object to the continuance because the Complainant had agreed to allow PECO to conduct an inspection of the property the following week and the inspection was pertinent to the Complaint allegations.

The matter was continued, and PECO was advised to notify the undersigned when the inspection was completed. On February 22, 2022, an Order was issued directing the Complainant to submit medical documentation no later than March 2, 2022, if an extensive continuance was required due to medical reasons. No documentation was submitted.

On March 7, 2022, an Order was issued granting the continuance. The Order also advised the Complainant that no further continuances will be granted, and that the Complainant should consider legal representation if he is unable to call in to the telephonic hearing on the scheduled date.

A Hearing Notice issued on March 7, 2022 and a Prehearing Notice issued on March 10, 2022 advised all parties that a telephonic hearing would be held on May 17, 2022, beginning at 10:00 a.m.

On May 17, 2022, the date of the rescheduled Hearing, the Complainant did not call into the hearing at 10:00 a.m. A recess was taken, and I called the Complainant to advise that the hearing had begun and provided Mr. Daly with the dial-in information. The Complainant eventually called into the hearing. Tr. 11-12.

The hearing convened and after settlement discussions, the Complainant stated that he would like a continuance due to medical reasons and to seek counsel. PECO objected to the continuance request. Given that the Complainant had called into the hearing, I granted Complainant's continuance request over PECO's objection. Further, I advised Complainant that this would be the last continuance of this matter. Tr. 14-17. I noted during the hearing that the Complainant capably participated in the proceedings. Tr. 15-16.

A May 17, 2022 hearing notice advised the parties that a Further Telephonic Hearing would be held on June 22, 2022.

By Prehearing Order, dated May 18, 2022, the Complainant was advised that if the Complainant chose to engage an attorney for this matter, the attorney must file an Entry of

Appearance no later than June 8, 2022. To date, counsel has not entered an appearance on the Complainant's behalf.

On June 14, 2022, the Complainant sent an email requesting that a continuance be granted due to medical reasons.¹

On June 15, 2022, PECO filed an objection to the continuance, stating that the Complainant had not provided any evidence to support an inability to participate in a telephonic hearing. PECO also noted that the Prehearing Orders and Hearing Notices in this matter state that requests for a continuance are only granted where "good cause" exists.

On June 15, 2022, an order was issued denying the Complainant's fifth request for a continuance.

On June 18, 2022, the Complainant sent an email to me and counsel for Peco stating that he wanted to discontinue this matter.

On June 21, 2022, I advised Mr. Daly that the June 18, 2022 email would be treated as a Petition for Leave to Withdraw and that the hearing would be canceled. Also on June 21, 2022, PECO sent an email stating that the Company had no objection to the petition to withdraw.

FINDINGS OF FACT

1. Arthur Daly is the Complainant.
2. PECO Energy Company is the Respondent.

¹ This Complainant's email requesting a continuance was treated as a Motion to Continue in accordance with 52 Pa.Code § 1.2(a), (c) and (d), which provides for waiver or disregard of an error or defect in procedures, particularly where it involves a *pro se* litigant.

3. On June 18, 2022, the Complainant sent an email to the undersigned and counsel for PECO stating that he wanted to discontinue this matter.

4. By email dated June 21, 2022, PECO stated it did not object to the Complainant's request to discontinue this matter.

DISCUSSION

By email dated June 18, 2022, Mr. Daly stated that he “voluntarily discontinues the lawsuit without prejudice since I’m in the hospital. Mmy [sic.] Motion for Cont has been denied in regard to Peco (sic) Acct # ‘1098’.”

52 Pa. Code §§ 1.2(a), (c) and (d) state,

(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.

Commission regulations address the withdrawal of pleadings in a contested proceeding at Section 5.94(a) of the Pennsylvania Code, 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).

Mr. Daly is representing himself in this matter. In accordance with 52 Pa. Code §§ 1.2(a), (c) and (d), I will treat the June 18, 2022 email from Mr. Daly as a Petition for Leave to Withdraw.

Mr. Daly voluntarily submitted his request to end the proceedings in this matter. PECO does not object.

Granting the Complainant's request to discontinue the proceedings or withdraw the Complaint is in the public interest and does not prejudice PECO. Further it ends the use of resources to continue a proceeding that, after a year since filing and multiple continuances, the Complainant no longer wishes to pursue.

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.

