

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Erika and Brendan Kelley
vs.
Duquesne Light Company

Public Meeting of August 4, 2022
3029920-ALJ
Docket No. F-2021-3029920

MOTION OF CHAIRMAN GLADYS BROWN DUTRIEUILLE

Before the Commission for consideration is the Complaint filed on November 17, 2021, by Erika and Brendan Kelley alleging that Duquesne Light Company (DLC) had not properly or accurately calculated, credited, and reimbursed them for their solar panel output. The Complainants claimed their solar panels generated more electricity than they consumed and that they were due monetary compensation for a “substantial surplus” of electric generation. The Complainants further requested DLC provide them information on how to transfer their electric account to another company.

An evidentiary hearing convened on February 17, 2022, before Administrative Law Judge (ALJ) DeVoe. Brendan Kelley (Mr. Kelley) was present and represented himself. At the hearing, Mr. Kelley began, but did not finish, his direct testimony. During his direct testimony and prior to any cross-examination by the Company, Mr. Kelley requested a continuance to give him an opportunity to obtain a witness from his solar panel company to authenticate and lay an appropriate foundation for his proposed exhibits. DLC agreed to a sixty-day continuance.

On February 18, 2022, a Further Hearing Notice was issued, scheduling the second day of hearing for April 19, 2022. On April 4, 2022, Mr. Kelley emailed the ALJ and DLC advising he was unable to secure a representative from his solar panel company to speak to a DLC representative. Mr. Kelley advised he had made multiple attempts to coordinate communication between his solar panel company and DLC, to no avail. He requested an additional continuance until he secured “a way to verify the solar output values that would substantiate [his] dispute.”

DLC did not consent to a second continuance. The ALJ notified both Parties that the request for continuance was denied. On April 11, 2022, Mr. Kelley emailed the ALJ, copying DLC’s attorney, advising he wanted to withdraw the Complaint. The ALJ responded to his email, directing his attention to 52 Pa. Code § 5.94, the rule governing withdrawals of pleadings.

The second day of hearing convened on April 19, 2022, as scheduled. Mr. Kelley did not appear. ALJ DeVoe dismissed the Complaint, with prejudice, due to Mr. Kelley not filing a formal petition for leave to withdraw prior to the closure of the record on May 5, 2022.

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.*

Mr. Kelley's April 11, 2022 correspondence clearly communicated his wish to withdraw the Complaint. Mr. Kelley's April 4, 2022 email explained his unsuccessful attempts to secure a solar panel company representative to substantiate his Complaint. Recognizing Mr. Kelley's *pro se* status, I believe that his emailed correspondence should have been deemed a Petition to Withdraw (Petition) the Complaint.¹

Having considered the Petition, I find there is no harm to the public interest in granting the request to withdraw the Complaint.² Since the Commission must also consider any objections to the Petition, it is appropriate to establish a 10-day objection period as set forth in Section 5.94.

THEREFORE, I MOVE THAT:

1. The Complainants' April 11, 2022 communication shall be deemed a Petition to Withdraw consistent with 52 Pa. Code § 5.94.
2. If no objection to the Petition to Withdraw is received within ten (10) days of the entry date of the Opinion and Order in this matter, the Petition to Withdraw shall be deemed granted and this docket shall be marked closed.
3. The Office of Special Assistants shall prepare an Opinion and Order consistent with this Motion.

August 4, 2022
Date



Gladys Brown Dutrieuille, Chairman

¹ 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. 52 Pa. Code § 1.2(c).

² *Stephen and Nancy J. Ulishney v. West Penn Power Company*, C-2021-3024487 (May 19, 2022).