

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Zenith Real Estate, Inc.	:	
	:	
v.	:	C-2022-3033455
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Darlene Heep
Administrative Law Judge

INTRODUCTION

The Complainant, Zenith Real Estate, Inc., through counsel, has filed a Praecipe to Withdraw Formal Complaint Without Prejudice. Philadelphia Gas Works does not object to the Complainant withdrawing the Formal Complaint and the Complainant’s request to withdraw is in the public interest. Therefore, the request to withdraw the Complaint will be granted.

HISTORY OF THE PROCEEDING

On June 29, 2022, Zenith Real Estate, Inc, (“Zenith” or “Complainant”) filed a Complaint with the Pennsylvania Public Utility Commission (“Commission”) against Philadelphia Gas Works (“PGW”). In the Complaint, Zenith stated that there were incorrect charges on its PGW bill.

On August 1, 2022, PGW filed an Answer denying all material allegations of fact and a Preliminary Objection asserting that the Commission lacked jurisdiction over the claims in the Complaint.

On August 2, 2022, the Complainant filed the instant Praecipe to Withdraw the Formal Complaint Without Prejudice. By email dated August 3, 2022, PGW stated that it had no objection to the Complainant's request to withdraw.

FINDINGS OF FACT

1. On June 29, 2022, Complainant Zenith Real Estate, Inc. filed a Complaint with the Commission against Philadelphia Gas Works.

2. On August 1, 2022, Philadelphia Gas Works filed an Answer and a Preliminary Objection.

3. On August 2, 2022, Zenith filed a Praecipe to Withdraw Formal Complaint Without Prejudice.

4. Philadelphia Gas Works does not object to the request to withdraw the Complaint without prejudice.

5. It is in the public interest to grant the Complainant's request to withdraw the Complaint.

DISCUSSION

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

Section 1.8 of the Code defines “Pleading” as the following:

An 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).

Zenith is seeking to withdraw the Complaint filed, without prejudice.¹ PGW does not object.

Granting the Complainant’s request to withdraw is in the public interest as it ends the use of resources to continue a proceeding that the Complainant no longer wishes to pursue. Moreover, the request to withdraw does not prejudice PGW. Accordingly, the Complainant’s request to withdraw the Complaint without prejudice is granted.

CONCLUSIONS OF LAW

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

¹ Although 52 Pa. Code § 5.94 allows a party to withdraw a complaint upon the filing of a Petition, a 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). Here, the Complainant clearly desires to withdraw its complaint. Accordingly, I deem Complainant’s Praecipe to Withdraw its Complaint to be a Petition to Withdraw its Complaint. 52 Pa. Code §§ 1.2(c) & 5.94.

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. Complainant's Praceipe to Withdraw Formal Complaint Without Prejudice is akin to a Petition for Leave to Withdraw Formal Complaint. 52 Pa. Code §§ 1.2(c)

4. The Complainant's request to withdraw the Complaint is in the public interest. 52 Pa. Code § 5.94.

ORDER

THEREFORE,

IT IS ORDERED.

1. The Formal Complaint of Zenith Real Estate, Inc. v. Philadelphia Gas Works at Docket Number C-2022-3033455 is withdrawn, without prejudice.

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

Date: October 11, 2022

_____/s/
Darlene Heep
Administrative Law Judge