

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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|-------------------------------|---|----------------|
| Garry Kaputa | : | |
| | : | |
| v. | : | C-2022-3035851 |
| | : | |
| Pennsylvania Electric Company | : | |

INITIAL DECISION

Before
Charece Z. Collins
Administrative Law Judge

INTRODUCTION

This Decision grants a petition to withdraw a Formal Complaint, as there is no objection to the petition, and granting the petition is in the public interest.

HISTORY OF THE PROCEEDING

On September 28, 2022, Mr. Garry Kaputa (Mr. Kaputa or Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Pennsylvania Electric Company (Penelec), at docket number C-2022-3035851.¹ In his Complaint, Mr. Kaputa averred that the subject matter in his informal complaint was not addressed; other information was incorrect in the explanation letter; no decision letter was mailed; and he had a medical issue at home. Mr. Kaputa requested a second payment arrangement or a “re-date” of his first payment arrangement, as he was one month behind in his bill payments. Mr. Kaputa’s Complaint was served on Penelec on October 4, 2022.

¹ This is an untimely appeal from a determination by the Commission’s Bureau of Consumer Services at BCS case number 3857687, in response to Complainant’s informal complaint.

On October 24, 2022, Penelec filed a timely answer in response to Mr. Kaputa's Complaint. In its answer, Penelec averred, among other things, that the allegations in Mr. Kaputa's Complaint appeared to be directed at the Commission's Bureau of Consumer Services, and not Penelec. Penelec requested that the Complaint be dismissed with prejudice or denied in its entirety. Penelec attached Mr. Kaputa's account statement and the underlying BCS decision to its answer.

On November 3, 2022, the Commission served an initial telephonic hearing notice setting a formal call-in telephonic hearing for this matter for January 12, 2023, at 10:00 a.m. and assigning Deputy Chief Administrative Law Judge Joel Cheskis as the presiding officer. In anticipation of the hearing, Judge Cheskis served a prehearing order on November 3, 2022, setting forth hearing information and the rules that would govern the proceeding.

On November 16, 2022, the Commission served a Judge Change Notice reassigning this matter to me. I also served a prehearing order on November 16, 2022, setting forth the new call-in information for the January 12, 2023, hearing and the rules that would govern the proceeding.

On January 3, 2023, Mr. Kaputa sent an email to me with questions regarding a potential withdrawal of his Complaint. I responded to Mr. Kaputa's email on January 3, 2023, by directing him to the legal division of the Commission's Office of Administrative Law Judge with any questions that he may have which that division could answer.

On January 9, 2023, Mr. Kaputa emailed me with a request to withdraw his Complaint. Mr. Kaputa stated that he did not intend to ask for a second payment arrangement, and that his Complaint was filed to address outstanding issues with the Commission's Bureau of Consumer Services, and not Penelec. Mr. Kaputa further stated that all issues listed in his Complaint had since been addressed. Margaret A. Morris, Esquire, counsel for Penelec, confirmed via email on January 9, 2023, that Penelec did not object to Mr. Kaputa's request to withdraw his Complaint.

On January 9, 2023, the Commission served a notice cancelling the January 12, 2023, hearing.

The record in this case closed on January 9, 2023, when Penelec indicated that it did not object to Mr. Kaputa's request to withdraw his Complaint. Mr. Kaputa's request will be treated as a petition to withdraw the Complaint. As there is no objection to Mr. Kaputa's petition and permitting Mr. Kaputa to withdraw his Complaint is in the public interest, Mr. Kaputa's petition will be granted, and this matter will be marked closed.

FINDINGS OF FACT

1. The Complainant in this case is Garry Kaputa.
2. The Respondent in this case is the Pennsylvania Electric Company.
3. On September 28, 2022, Mr. Kaputa filed a Formal Complaint with the Commission against Pennsylvania Electric Company, averring that the issues raised in his underlying informal complaint were not addressed.
4. On October 24, 2022, Pennsylvania Electric Company filed an answer in response to Mr. Kaputa's Complaint averring that his allegations appeared to be directed towards the Commission's Bureau of Consumer Services and requesting that Mr. Kaputa's Complaint be denied in its entirety.
5. On November 3, 2022, the Commission served a hearing notice establishing a telephonic hearing for January 12, 2023, at 10:00 a.m. to hear Mr. Kaputa's Complaint.
6. On January 9, 2023, Mr. Kaputa sent an email to me seeking to withdraw his Formal Complaint.

7. On January 9, 2023, Penelec indicated that it did not object to Mr. Kaputa's request to withdraw his Formal Complaint.

DISCUSSION

The withdrawal of pleadings in a contested proceeding is governed by Section 5.94(a) of the Commission's regulations, which provides:

§ 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, 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).

Moreover, an error or defect of procedure which does not affect the substantive rights of the parties may be disregarded. 52 Pa. Code § 1.2(a). Instead of filing a petition with the Commission, Mr. Kaputa sent his request to withdraw his Complaint via email. While Section 5.94(a) of the Commission's regulations requires a petition to be filed with the Commission and served on the parties, allowing Mr. Kaputa to send an email in lieu of filing a formal petition with the Commission would not affect the substantive rights of the parties. In fact, it has enabled Mr. Kaputa to request the withdrawal of his Complaint with ease, as he no longer desires to proceed with his Complaint. Penelec did not object to Mr. Kaputa's request to withdraw his Complaint or the format in which he submitted his request. Therefore, for the purposes of this proceeding, I consider Mr. Kaputa's email to be a petition to withdraw his Complaint.

In his petition, Mr. Kaputa requested that his Complaint be withdrawn and stated that the issues raised in his Complaint had been addressed. It is in the public interest to allow Mr. Kaputa to withdraw his Complaint if he no longer sees a need to pursue the issues that he raised. It would not be in the public interest to require a complainant to continue to pursue a complaint if that individual no longer desired to proceed. Mr. Kaputa has clearly stated that he does not want to proceed with his complaint. Furthermore, there is no indication that the matters complained of in Mr. Kaputa's Complaint affect the public at large or anyone beyond Mr. Kaputa. It is therefore in the public interest to allow Mr. Kaputa to withdraw his Complaint. Penelec also confirmed that it had no objection to Mr. Kaputa's request to withdraw his Complaint. As a result, the requirements of Section 5.94(a) of the Commission's regulations governing withdrawal of pleadings in contested proceedings have been satisfied, and Mr. Kaputa'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. 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 setting for the reasons for the withdrawal. 52 Pa. Code § 5.94(a).
3. After considering a petition to withdraw, 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. An error or defect of procedure which does not affect the substantive rights of the parties may be disregarded. 52 Pa. Code § 1.2(a).
5. Granting Mr. Kaputa's petition to withdraw his Complaint, filed on September 28, 2022, is in the public interest.

ORDER

THEREFORE,

IT IS ORDERED:

1. That Garry Kaputa's petition to withdraw the Complaint that he filed on September 28, 2022, at docket number C-2022-3035851 is hereby granted.
2. That the Formal Complaint filed by Garry Kaputa against the Pennsylvania Electric Company on September 28, 2022, at docket number C-2022-3035851 is hereby withdrawn.
3. That this matter is marked closed.

Date: February 14, 2023

_____/s/
Charece Z. Collins
Administrative Law Judge