

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Donald Cancelmo	:	
	:	
v.	:	C-2022-3035883
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Emily I. DeVoe
Administrative Law Judge

INTRODUCTION

This Initial Decision grants Complainant’s unopposed Petition to Withdraw his Formal Complaint.

HISTORY OF THE PROCEEDING

On October 3, 2022, Donald Cancelmo (Complainant or Mr. Cancelmo) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO, Company, or Respondent) using the Formal Complaint form. He checked the “Other” box as the reason for his complaint. Mr. Cancelmo avers that PECO’s Neighborhood Pilot Natural Gas Project issues pricing credits based on a pricing credit structure that is “flawed and subject to gaming of the system.” He argues that “issuing price discounts based on the number of appliances one indicates they intend to hook up to gas can be gamed.” He further argues “issuing price discounts to homeowners with higher square foot homes because they will consume more gas is grossly unfair, benefitting the more affluent, and seems to contradict PECO’s other conservation efforts.” He argues, “These questionable

practices have resulted in very large differences in the costs being born by homeowners in adjoining neighborhoods, discouraging participation in the program.” As relief, he argues these practices should be discontinued, and he proposes a “more equitable way to allocate the costs of this initiative.” Mr. Cancelmo then details how his new methodology would work and how the costs would be calculated.

On October 25, 2022, PECO filed an Answer and New Matter to the Complaint, as well as a Preliminary Objection. In its Answer, PECO avers the structure and funding for its Neighborhood Pilot Natural Gas Program (Pilot Program) has been reviewed and approved by the Commission in PECO’s 2020 gas rate case. PECO further avers participation in the Pilot Program is voluntary and is not required to maintain service with PECO. PECO explains that the structure of PECO’s Energy Pilot Program has been approved and is outlined for the public in its Natural Gas Tariff, in its Natural Gas Pilot Rider. As such, PECO argues the Complaint is “moot” and “without merit.”

In its New Matter, PECO argues the Commission lacks jurisdiction to address the financial structure of a previously approved Neighborhood Gas Pilot Program in the context of a proceeding on a Formal Complaint after the Pilot Program has been approved in a separate proceeding. PECO argues the Complaint fails to raise any claim for which relief can be granted and must be dismissed.

In its Preliminary Objection, PECO argues the Complaint is legally insufficient because the Commission has previously approved the Pilot Program’s design and cost structure as part of its Final Decision in Docket No. R-2020-3018929 (2020 Rate Case), finding the Pilot Program was “just and reasonable.” PECO avers the Commission’s Final Order in the 2020 Rate Case has the weight of law unless the PUC changes it in response to a petition for reconsideration, or it is successfully challenged in court.

PECO further argues that its customers have a right to participate in the gas ratemaking process and can do so by filling out a complaint form, completing the Commission’s objection/comment form, or by voicing their opinions and giving testimony.

PECO maintains that the cost structure for the Pilot Program is complete, and the Complaint should be dismissed because it fails to set forth an allegation that PECO violated the Public Utility Code, the regulations of the PUC, or PECO's Tariff, as required by 52 Pa. Code § 5.22(a)(4).

The Preliminary Objection was attached to a Notice to Plead. Complainant did not file a response to the Preliminary Objection.

On December 1, 2022, I issued an Interim Order granting PECO's Preliminary Objection and ordering Complainant to file an amended Complaint by December 12, 2022. I also ordered PECO to file an answer and/or other responsive pleading or motion by December 21, 2022.

Complainant did not file an amended Complaint as directed, and PECO did not make any filing either. Therefore, I scheduled a prehearing conference to discuss the December 1, 2022, Interim Order and Complainant's claims. A prehearing conference was scheduled for March 16, 2023, by Hearing Notice issued on January 10, 2023.

On January 11, 2023, Mr. Cancelmo sent me an *ex parte* email writing, "Please be advised that at this time, I wish to withdrawal [sic] the above referenced complaint."¹ I forwarded the email to PECO's counsel, advising that I was treating Mr. Cancelmo's email as a petition for leave to withdraw the complaint and directing her to file an objection, if any, to the petition by January 18, 2023. Counsel immediately responded by email advising PECO had no objection to the petition to withdraw.

A Notice cancelling the evidentiary hearing was issued January 11, 2023. An Interim Order closing the record was entered January 12, 2023. This matter is now ripe for adjudication.

¹ The emails I received from Mr. Cancelmo and PECO's counsel were attached to the Commission's online docket by the Secretary's Bureau on January 12, 2023.

FINDINGS OF FACT

1. On October 3, 2022, Complainant filed a Complaint challenging the pricing credit structure of PECO's Neighborhood Pilot Natural Gas Project.
2. On October 25, 2022, PECO filed an Answer and New Matter to the Complaint, as well as a Preliminary Objection.
3. The Preliminary Objection was attached to a Notice to Plead. Complainant did not file a response to the Preliminary Objection.
4. On December 1, 2022, an Interim Order was issued, granting PECO's Preliminary Objection, ordering Complainant to file an amended Complaint by December 12, 2022, and PECO to file an answer and/or other responsive pleading or motion by December 21, 2022.
5. Neither Complainant nor PECO made any filings as directed by the December 1, 2022, Interim Order.
6. A Hearing Notice was issued on January 10, 2023, scheduling a prehearing conference for March 16, 2023.
7. On January 11, 2023, Mr. Cancelmo notified me in an email that he wanted to withdraw his Complaint.
8. On January 11, 2023, PECO notified me in an email it had no objection to the withdrawal of the Complaint.
9. On October 17, 2022, an Interim Order was issued closing the record in this matter.

DISCUSSION

The Commission's rules provide that a party in a contested proceeding may file for leave to withdraw a pleading with the Commission and serve it upon the other parties.² The Commission's rules provide that any objection to the petition must be filed within ten days of service.³ 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.⁴ However, 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.⁵

In this case, Complainant sent an email to me indicating his desire to withdraw the Complaint. PECO sent an email in response indicating it had no objection to the withdrawal.

Complainant clearly indicated his intent to withdraw the Complaint, and PECO stated it had no objection. To the extent this deviated from the Commission's rules regarding the filing of formal petitions for leave to withdraw complaints, and objections thereto, I am exercising my discretion to disregard these defects of procedure. There is no purpose in moving forward with the instant Complaint. It is in the public interest to grant Complainant's Petition for Leave to Withdraw the Complaint and dismiss the Complaint. Forcing the parties to proceed to an evidentiary hearing in this matter would needlessly consume the Commission's and parties' time and resources.

² 52 Pa. Code § 5.94(a).

³ *Id.*

⁴ *Id.*

⁵ 52 Pa. Code § 1.2(a).

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter in 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. 52 Pa. Code § 5.94(a).
3. A party may object to a petition for leave to withdraw a pleading within ten days of service. 52 Pa. Code § 5.94(a).
4. 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. 52 Pa Code § 1.2(a)
5. After considering a petition for leave to withdraw a pleading, 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).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Petition for Leave to Withdraw the Complaint filed by Donald Cancelmo against PECO Energy Company is granted.

2. That the Formal Complaint filed by Donald Cancelmo in Donald Cancelmo v. PECO Energy Company at Docket No. C-2022-3035883 is dismissed without prejudice.

3. That the Docket at C-2022-3035883 shall be marked as closed.

Date: February 21, 2023

_____/s/
Emily I. DeVoe
Administrative Law Judge