

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Bobby Malafee	:	
	:	
v.	:	C-2022-3037213
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Michael J. Mroczka  
Special Agent

**INTRODUCTION**

This Initial Decision grants the Complainant’s Petition for Leave to Withdraw the Formal Complaint because there is no objection to the Petition and granting the Petition is in the public interest.

**HISTORY OF THE PROCEEDING**

On December 12, 2022, Bobby Malafee (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW or Respondent). The Complaint alleges that Respondent is threatening to shut off his electric service or has already shut off his service and requests a Commission-issued payment arrangement.

On January 3, 2023, PGW filed an Answer to the Complaint denying, in part, and admitting, in part, the allegations in the Complaint. In its Answer, PGW states, *inter alia*, that the account in question is a commercial account and that the service address is equipped with a

functioning automatic meter reading device and the bills are based on actual meter readings. PGW requested that the Complaint be dismissed.

By Hearing Notice dated January 6, 2023, an Initial Call-In Telephonic Hearing was scheduled for February 27, 2023.

A Prehearing Order was issued on February 21, 2023, reminding the parties of the date and time of the scheduled hearing, and informing them of the procedures applicable to this proceeding. The Prehearing Order also advised the parties:

If you are an individual, you may represent yourself or you may have an attorney represent you. All others, including a partnership, corporation, trust, association, or governmental agency or subdivision, must be represented by an attorney licensed to practice law in Pennsylvania, or admitted *pro hac vice*. And, unless you are an attorney, you may not represent someone else.

On February 27, 2023, the parties were present for the scheduled hearing. Prior to going on the record, there was discussion regarding possible settlement or mediation. Unfortunately, settlement could not be reached and there was no agreement to mediation. However, it did become clear that the account in question was not a residential service, but a commercial service held under J&B Bridesburg Pizza, LLC. Therefore, a hearing could not convene without Mr. Malafee/J&B Bridesburg Pizza, LLC securing attorney representation.

I placed on the record that Mr. Malafee/J&B Bridesburg Pizza, LLC would have thirty days from February 27, 2023, to cause an attorney to enter an appearance on their behalf. I advised that if an attorney did not enter their appearance within thirty days, I would entertain a motion to dismiss from PGW. I advised that I would issue an Interim Order stating the same.

On March 16, 2023, I issued an Interim Order requiring Complainant to have an attorney enter an appearance in accordance with 52 Pa. Code § 1.21-1.25, on or before March 29,

2023, and advising that failure to cause an attorney to enter an appearance may result in dismissal of the complaint in its entirety.

An attorney licensed in Pennsylvania has not entered an appearance in this matter on behalf of Mr. Malafee/J&B Bridesburg Pizza, LLC.

On May 25, 2023, PGW filed a Motion to Dismiss based upon Complainant's failure to cause an attorney to enter an appearance under Commission regulations and the March 16, 2023, Interim Order.

After receipt of the Motion to Dismiss, on May 25, 2023, Complainant, via email, stated that he is withdrawing his Complaint because the business closed. PGW replied, stating that it had no objection to the withdrawal of the Formal Complaint.

For the reasons discussed below, the Complainant's email request will be treated as a Petition for Leave to Withdraw the Formal Complaint and will be granted.

#### FINDINGS OF FACT

1. The Complainant is Bobby Malafee.
2. The Respondent is Philadelphia Gas Works.
3. On December 12, 2022, the Complainant filed a Formal Complaint against PGW.
4. On January 3, 2023, PGW filed an Answer to the Complaint denying, in part, and admitting, in part, the allegations in the Complaint.
5. By Hearing Notice dated January 6, 2023, an Initial Call-In Telephonic Hearing was scheduled for February 27, 2023.

6. On February 27, 2023, at the date and time of the scheduled hearing, it became clear that the account in question was not a residential service, but a commercial service held under J&B Bridesburg Pizza, LLC. Therefore, a hearing could not convene without Mr. Malafee/J&B Bridesburg Pizza, LLC securing attorney representation.

7. On February 27, 2023, I informed the parties on the record that Mr. Malafee/J&B Bridesburg Pizza, LLC would have thirty days from February 27, 2023, to cause an attorney to enter an appearance on their behalf.

8. On March 16, 2023, I issued an Interim Order requiring Complainant to have an attorney enter an appearance in accordance with 52 Pa. Code § 1.21-1.25, on or before March 29, 2023, and advising that failure to cause an attorney to enter an appearance may result in dismissal of the complaint in its entirety.

9. An attorney licensed in Pennsylvania has not entered an appearance in this matter on behalf of Mr. Malafee/J&B Bridesburg Pizza, LLC.

10. On May 25, 2023, PGW filed a Motion to Dismiss based on Complainant's failure to have an attorney enter an appearance.

11. After receipt of the Motion to Dismiss, on May 25, 2023, Complainant, via email, stated that he is withdrawing his Complaint because the business closed.

12. PGW does not object to the withdrawal of the Complaint.

#### DISCUSSION

The Commission's Rules of Practice and Procedure at 52 Pa. Code § 5.94 permit parties to petition to withdraw pleadings in a contested proceeding:

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).

The petition is granted only by permission of the presiding officer or the Commission. 52 Pa. Code § 5.94. The presiding officer or Commission must consider the petition, any objections thereto, and the public interest in determining whether to permit withdrawal of the pleading. *Id.*

A presiding officer or the Commission may disregard an error or defect of procedure or waive a requirement that does not adversely affect a substantive right of a party, particularly in proceedings involving *pro se* litigants. 52 Pa. Code §§ 1.2(a), (c), (d). Therefore, the Complainant's email stating that he wishes to withdraw his Complaint will be treated as a Petition for Leave to Withdraw the Complaint. Further, Complainant, although technically an LLC, will be permitted to proceed *pro se* only for the purposes of the Petition to Withdraw.

Under these circumstances, granting the Complainant's request to withdraw his Complaint is in the public interest because doing so will eliminate the need for litigation and save the parties any additional costs in time and money they would otherwise incur litigating a matter the Complainant no longer wishes to pursue. Additionally, Complainant has stated that the business to which the account at issue is associated is closed. Further, the Complaint does not contain any novel issue or issues that would impact the public interest. Accordingly, the Complainant's Petition to withdraw his Complaint shall be granted.

## CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to and 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.

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. 52 Pa. Code § 5.94(a).

4. A presiding officer or the Commission may disregard an error or defect of procedure or waive a requirement that does not adversely affect a substantive right of a party, particularly in proceedings involving *pro se* litigants. 52 Pa. Code §§ 1.2(a), (c), (d).

5. It is in the public interest to grant the Complainant's Petition for Leave to Withdraw the Formal Complaint. 52 Pa. Code § 5.94.

## ORDER

THEREFORE,

IT IS ORDERED:

1. That Bobby Malafee's Petition for Leave to Withdraw the Formal Complaint filed at Docket No. C-2022-3037213 is granted.

2. That the Formal Complaint of Bobby Malafee at Bobby Malafee v. Philadelphia Gas Works, Docket No. C-2022-3037213, is withdrawn.

3. That Docket No. C-2022-3037213 be marked closed.

Date: June 21, 2023

\_\_\_\_\_/s/  
Michael J. Mroczka  
Special Agent