

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jim Burgunder

v.

Duquesne Light Company

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C-2023-3044052

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This Initial Decision grants the Complainant's request to withdraw his Formal Complaint because there is no objection to it and granting the request is in the public interest.

HISTORY OF THE PROCEEDING

On November 2, 2023, Jim Burgunder (Complainant) filed a Formal Complaint (Complaint) against Duquesne Light Company (Duquesne or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant sought reimbursement for damages allegedly caused by Duquesne.

On November 24, 2023, Duquesne filed an Answer with New Matter (Answer) along with a Notice to Plead. In its Answer, Duquesne denied all material allegations in the Complaint.

Also on November 24, 2023, Duquesne filed Preliminary Objections to the Complaint, along with a Notice to Plead. In its Preliminary Objections, Duquesne requested the Commission dismiss the portions of the Complaint requesting monetary damages because the Commission does not have jurisdiction or authority to award civil damages.

On November 27, 2023, Frederich E. Lichti, Esq. filed an Entry of Appearance on behalf of the Complainant.

On December 21, 2023, the Complainant filed a Petition for Leave to Withdraw the Complaint pursuant to 52 Pa. Code § 5.94.

On December 28, 2023, Counsel for the Respondent filed a letter advising that Duquesne does not object to the Petition for Leave to Withdraw.

By motion judge assignment notice dated January 8, 2024, the parties were informed that I would be responsible for any matters which may arise during the preliminary phase of this proceeding.

FINDINGS OF FACT

1. The Complainant is Jim Burgunder.
2. The Respondent is Duquesne Light Company.
3. On November 2, 2023, the Complainant filed a Formal Complaint against Duquesne.
4. On November 24, 2023, Duquesne filed an Answer with New Matter to the Complaint denying all material allegations in the Complaint.

5. On December 21, 2023, the Complainant filed a Petition for Leave to Withdraw the Complaint pursuant to 52 Pa. Code § 5.94.

6. Duquesne does not object to the Petition for Leave to Withdraw.

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. *Id.* 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. 52 Pa. Code § 5.94.

In this case, the Complainant filed a Complaint *pro se* seeking reimbursement for damages allegedly caused by Duquesne. It is well settled law that the Commission does not have jurisdiction to award monetary damages.¹ Subsequently, the Complainant retained counsel who

¹ See, *DeFrancesco v. W. Pa. Water Co.*, 453 A.2d 595 (Pa. 1982); *Elkin v. Bell Tel. Co. of Pa.*, 420 A.2d 371 (Pa. 1980); *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1977); *Poorbaugh v. Pa. Pub. Util. Comm'n*, 666 A.2d 744 (Pa. Cmwlth. 1995).

entered his appearance on behalf of the Complainant on November 27, 2023. Thereafter, the Complainant filed a Petition for Leave to Withdraw the Complaint. Duquesne does not object.

Under these circumstances, granting the Complainant's request to withdraw the 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 case wherein the relief sought cannot be granted. Further, the Complaint does not contain any novel issues or issues that would impact the public interest. Accordingly, the Complainant's Petition for Leave to Withdraw the 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. It is in the public interest to grant the Complainant's Petition for Leave to Withdraw the Complaint. 52 Pa. Code § 5.94.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complainant's Petition for Leave to Withdraw the Complaint in the matter of Jim Burgunder v. Duquesne Light Company at Docket No. C-2023-3044052 is granted.
2. That the Complaint of Jim Burgunder in the matter of Jim Burgunder v. Duquesne Light Company at Docket No. C-2023-3044052 is withdrawn.
3. That Docket No. C-2023-3044052 be marked closed.

Date: February 1, 2024

_____/s/_____
F. Joseph Brady
Administrative Law Judge