

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Brack Elliot	:	
	:	
v.	:	F-2023-3041093
	:	
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 May 18, 2023, Brack Elliot (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW, Company or Respondent).¹ Complainant checked the boxes on the Complaint form stating that the utility is threatening to shut off Complainant’s service or has already shut off Complainant’s service and that Complainant needs the gas on because he is sick.

¹ The Complaint is a timely appeal from the determination of the Commission’s Bureau of Consumer Services (BCS), at BCS No. 3894162, which dismissed Complainant’s informal complaint. A timely BCS appeal is subject to *de novo* review. 52 Pa. Code § 56.173(a).

On June 26, 2023, the Respondent filed an Answer in which it denied the material allegations of fact in the Complaint. Respondent requested that the Complaint be dismissed.

On June 27, 2023, an Initial Call-In Telephone Hearing Notice was served on the parties scheduling an initial telephonic hearing on July 31, 2023, at 10:00 a.m. and the case was assigned to me. The hearing notice was served on the Complainant by email and U.S. First-Class Mail.

A Prehearing Order was issued on July 6, 2023, reminding the parties of the date and time of the scheduled hearing, and informing them of the procedures applicable to this proceeding.

On July 31, 2023, the hearing convened as scheduled. Graciela Christlieb, Esquire, appeared on behalf of Respondent along with one witness and was ready to proceed. The court reporter was also present. Complainant was not present to start the hearing. After a short recess to allow time for Complainant to appear, the hearing proceeded in Complainant's absence. No testimony was taken, and no exhibits were introduced into the record. At the hearing, Respondent moved to dismiss the Complaint with prejudice for Complainant's failure to appear and prosecute the Complaint. I took this motion under advisement.

The transcript of the July 31, 2023, hearing was filed on August 25, 2023, and the record was closed. Upon review of the record, I could not ascertain how the Prehearing Order was served on the Complainant. Complainant did not sign up for eService or elect to receive service by email. However, the parties list which accompanied the Prehearing Order stated that Complainant accepts eService. There was nothing else on the record or case history indicating how the Prehearing Order was served or whether it was served via first-class mail, as required.

On November 7, 2023, I issued an Interim Order Reopening Record For Further Hearing to ensure due process was provided to Complainant.

On December 19, 2023, a Further Hearing Notice was served on the parties scheduling a telephonic hearing for February 22, 2024 at 10:00 a.m.

On January 16, 2024, a second Prehearing Order was issued and served on the parties.

On February 21, 2024, I received an email from PGW's attorney, Anita Murray, explaining that PGW contacted Complainant. Attorney Murray stated that Mr. Elliot said he no longer wanted to proceed with his Complaint and he asked that PGW contact me regarding his request. Attorney Murray stated that PGW has no objection to Complainant's request.

On February 21, 2024, a Hearing Cancellation Notice was served on the parties, cancelling the hearing scheduled for February 22, 2024.

For the reasons discussed below, the Complainant's request to no longer proceed with his Complaint will be treated as a Petition for Leave to Withdraw the Formal Complaint and will be granted.

FINDINGS OF FACT

1. The Complainant is Brack Elliot.
2. The Respondent is Philadelphia Gas Works.
3. On May 18, 2023, the Complainant filed a Formal Complaint against PGW.
4. On June 26, 2023, PGW filed an Answer to the Complaint denying the material allegations of fact in the Complaint.

5. By Hearing Notice dated June 27, 2023, an Initial Call-In Telephonic Hearing was scheduled for July 31, 2023.
6. Complainant did not appear for hearing on July 31, 2023.
7. Upon review of the record, I could not ascertain whether Complainant was properly served the Prehearing Order.
8. On November 7, 2023, I issued an Interim Order Reopening Record For Further Hearing.
9. On December 19, 2023, a Further Hearing Notice was served on the parties scheduling a telephonic hearing for February 22, 2024 at 10:00 a.m.
10. On January 16, 2024, a second Prehearing Order was issued and served on the parties.
11. On February 21, 2024, I received an email from PGW's attorney stating that Mr. Elliot said he no longer wanted to proceed with his Complaint and he asked that PGW contact me regarding his request.
12. PGW has no objection to Complainant's request.

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 email from PGW's attorney stating that Complainant asked them to inform me that he no longer wished to proceed with the Complaint will be treated as a Petition for Leave to Withdraw the Complaint.

PGW does not object to the withdrawal. 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. 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 will 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 Brack Elliot's Petition for Leave to Withdraw the Formal Complaint filed at Docket No. F-2023-3041093 is granted.

2. That the Formal Complaint of Brack Elliot at Brack Elliot v. Philadelphia Gas Works, Docket No. F-2023-3041093, is withdrawn.

3. That Docket No. F-2023-3041093 be marked closed.

Date: March 20, 2024

/s/
Michael J. Mroczka
Special Agent