

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Donna DeSanto Ott	:	
	:	
v.	:	C-2018-3005829
	:	
Metropolitan Edison Company	:	

INITIAL DECISION

Before
Gail M. Chiodo
Administrative Law Judge

INTRODUCTION

This decision grants a customer’s written request to withdraw her Formal Complaint, filed by the customer’s counsel, because there is no objection to the request and granting it is in the public interest.

HISTORY OF THE PROCEEDING

On November 7, 2018, Donna DeSanto Ott (Complainant) filed *pro se* a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Metropolitan Edison Company (Respondent or Company) objecting to the installation of a smart meter on her property, alleging, *inter alia*, that smart meters are unsafe and unhealthy. On November 27, 2018, the Company filed an Answer and New Matter in which it denied the material allegations of the Complaint and requested that the Complaint be dismissed.

Thereafter, the Commission assigned Administrative Law Judge (ALJ) Jeffrey A. Watson to preside over this matter. Next, the record reveals a lengthy procedural history,

including several prehearing conferences, several revised litigation schedules, and the filings of various motions by both parties.

On June 25, 2019, Michael P. Giles, Esquire, entered an appearance on behalf of the Complainant.

On August 31, 2020, an evidentiary hearing was held before ALJ Watson. On October 8, 2020, a 124-page hearing transcript was filed with the Commission.

On September 1, 2020, a briefing schedule was issued, allowing the parties to file main briefs on or before October 30, 2020. However, prior to this deadline for filing main briefs, on October 16, 2020, the Company filed a Motion to Stay this proceeding. The Complainant did not oppose this Motion.

On November 4, 2020, this matter was stayed pursuant to the Commission's Order at *Smart Meter Procurement and Installation*, No. M-2009-2092655 (Order entered 11/4/2020) (*Stay Order*). On November 14, 2023, the *Stay Order* was lifted by the Commission's Order entered that day at this M-docket number.

On November 27, 2023, this matter was reassigned from ALJ Watson to the undersigned ALJ by a Judge Change Notice.

By Notice dated December 13, 2024, a post-hearing conference was scheduled for February 16, 2024.¹

On February 12, 2024, the Complainant, through counsel, filed a "Praecipe to Withdraw Complaint and Discontinue Action" (*Praecipe*). In this document, the Complainant requested that the Commission mark the Complaint as withdrawn and discontinued. No reason

¹ Additionally, an Order dated December 12, 2024, was issued explaining that the purpose of this conference was to discuss whether either party wished to reopen the evidentiary record in light of *Povacz v. Pa. Pub. Util. Comm'n*, 280 A.3d 975 (Pa. 2002), whether the parties wished to submit briefs, and whether there was any other procedural matter the parties wished to address.

was provided for the withdrawal and prior to the conference scheduled, neither party requested that the conference be cancelled in light of this filing.

On February 16, 2024, the post-hearing conference convened as scheduled. The Complainant did not personally appear but was represented by her counsel, Attorney Giles. The Company was represented by Tori Giesler, Esquire.

At this conference, Attorney Giles explained that the Complainant wished to withdraw her Complaint for health reasons.² The Company did not oppose this request.³

For the reasons discussed below, the *Praecipe* will be treated as a Petition to Withdraw the Complaint and will be granted.

FINDINGS OF FACT

1. The Complainant is Donna DeSanto Ott.
2. The Respondent is Metropolitan Edison Company.
3. On November 7, 2018, Ms. Ott filed, *pro se*, a Formal Complaint against the Company alleging, *inter alia*, that she did not want the Company to install a smart meter at her residence because smart meters are unsafe and unhealthy.
4. On November 27, 2018, the Company filed an Answer and New Matter denying the material allegations the Complaint.

² Attorney Giles explained, “My client’s health is such that continuing to pursue this matter would obviously increase the risk involved with her to the extent that she’s actually received what we call a sudden death letter from her treating physician that basically says she really shouldn’t pursue this any further.” (Tr. at 129).

³ During the conference, there was also some off and on-the-record discussion whether the parties preferred to resolve this matter through a certificate of satisfaction pursuant to 52 Pa. Code § 5.24. (*See* Tr. at 130-31). In light of this discussion, I advised the parties that I would give them fifteen days to file a Certificate of Satisfaction, and if one was not filed, that I would consider the *Praecipe* as a Petition to Withdraw the Complaint pursuant to 52 Pa. Code § 5.94, as requested by the Complainant. (*See* Tr. at 130-31). The record closed on March 4, 2024, fifteen days following the post hearing conference. To date, no Certificate of Satisfaction has been filed.

5. On June 25, 2019, Michael P. Giles, Esquire, entered an appearance on behalf of the Complainant.
6. On August 31, 2020, an evidentiary hearing was held before ALJ Watson.
7. On October 8, 2020, a 124-page hearing transcript was filed with the Commission.
8. Prior to the deadline for filing Reply Briefs pursuant to a Briefing Order, the Company filed a Motion to Stay this proceeding.
9. On November 4, 2020, this matter was stayed pursuant to the Commission's Order at *Smart Meter Procurement and Installation*, No. M-2009-2092655 (Order entered 11/4/2020) (*Stay Order*).
10. On November 14, 2023, the *Stay Order* was lifted by the Commission. *Smart Meter Procurement and Installation* No. M-2009-2092655 (Order entered 11/14/2023).
11. On February 12, 2024, the Complainant, through counsel, filed a "Praecipe to Withdraw Complaint and Discontinue Action" (*Praecipe*), requesting that the Commission mark the Complaint as withdrawn and discontinued.
12. On February 16, 2024, the post-hearing conference convened as scheduled. The Complainant did not personally appear but was represented by her counsel, Mr. Giles. The Company was represented by Tori Giesler, Esquire.
13. At this conference, Attorney Giles explained that the Complainant wished to withdraw her Complaint for health and medical reasons, and requested that the *Praecipe* be treated as a Petition to Withdraw the Complaint pursuant to the applicable Commission Regulations. (Tr. at 129, 130-31).

14. The Company does not object to the Complainant's request to withdraw the Complaint. (*See* Tr. at 130-31).

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) [relating to withdrawing a protest to an application], 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).

Thus, the petition is granted only by permission of the presiding officer or the Commission. 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. Further, 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. 52 Pa. Code §§ 1.2(a), (c).

In the instant case, the Complainant's Praecipe to Withdraw Complaint and Discontinue Action filed by the Complainant's attorney, together with counsel's representation at the post-hearing conference that the Complainant wishes to withdraw her Complaint for health reasons, will be treated as a petition for leave to withdraw her Complaint pursuant to 52 Pa. Code § 5.94(a).

Under the circumstances of the instant case, the Commission has no interest in mandating that a customer continue litigation when the customer indicates no interest in prosecuting the Complaint because of her individual health situation. Further, granting the Complainant's request is reasonable and in the public interest because doing so will eliminate the need for litigation and save the parties any additional costs in time and money that they would otherwise incur litigating the case. *Bayala v. Philadelphia Gas Works*, No. F-2017-2624911 (Final Order entered April 19, 2018). There are no other parties to this proceeding and Ms. Ott's Complaint does not impact other customers. Finally, there is no objection to the request to withdraw.

Accordingly, the Complainants' request to withdraw her 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. 52 Pa. Code § 5.94(a).

3. A petition to withdraw a pleading in a contested proceeding must set forth the reasons for the withdrawal and that a party may object to the petition within 10 days. 52 Pa. Code § 5.94(a).

4. The presiding officer or Commission 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 to withdraw a pleading in a contested proceeding, 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).

6. It is in the public interest to allow Ms. Ott to withdraw her Complaint.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the written request of the Complainant, Donna DeSanto Ott, to withdraw her Formal Complaint against Metropolitan Edison Company at Docket Number C-2018-3005829, is granted.
2. That the Formal Complaint filed by the Complainant, Donna DeSanto Ott, against Metropolitan Edison Company, at Docket Number C-2018-3005829, is hereby withdrawn.
3. That this matter be marked closed.

Date: April 3, 2024

_____/s/
Gail M. Chiodo
Administrative Law Judge