

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Keisha Truax	:	
	:	
v.	:	C-2020-3023039
	:	
West Penn Power Company	:	

INITIAL DECISION

Before
Mary D. Long
Administrative Law Judge

INTRODUCTION

This decision grants a complainant’s petition to withdraw her complaint because she no longer lives in Pennsylvania.

HISTORY OF THE PROCEEDINGS

On November 27, 2020, Keisha Truax (Complainant) filed a Formal Complaint against West Penn Power Company (West Penn Power) alleging that the Commission should direct West Penn Power to remove the smart meter installed at her service address, citing a number of health conditions.¹

¹ The Complainant registered to receive service by e-file.

On November 4, 2020, in view of the appellate court litigation surrounding smart meters, the Commission issued a general stay of all smart meter proceedings pending before it. By letter dated December 21, 2020, West Penn Power stated that it would file an answer to the complaint when the Commission lifted the stay.²

On August 16, 2022, the Pennsylvania Supreme Court issued a decision in *Povacz v. Pa. Public Utility Commission (Povacz II)*.³ In *Povacz II*, the Pennsylvania Supreme Court resolved many of the outstanding legal issues in many smart meter cases. The court held, among other things, that under Act 129, customers have no right to refuse smart meter installation.⁴ The court further clarified the burden of proof required to support a claim that the installation of a smart meter violates the safe and reasonable service requirement of Section 1501 of the Public Utility Code.⁵ Specifically, the Court held that to prove that a smart meter is unsafe service under Section 1501, a complainant must support that allegation with medical or expert testimony.

By order entered November 14, 2023, the Commission lifted the general stay of smart meter proceedings and directed the Office of Administrative Law Judge to proceed with pending formal complaint proceedings as directed by the presiding administrative law judge.

² The Office of Administrative Law Judge served a notice on January 28, 2021, assigning the complaint to me.

³ *Povacz v. Pa. Pub. Util. Comm'n*, 280 A.3d 975 (Pa. 2022) (*Povacz II*).

⁴ *Id.* at 997.

⁵ 66 Pa.C.S. § 1501.

West Penn Power filed an Answer and New Matter to the Formal Complaint on December 4, 2023. West Penn Power admitted that a smart meter was installed at the Complainant's service address, but denied the allegation that the installation of the smart meter violated any law or that it was permitted or required to remove the smart meter.

West Penn Power also filed preliminary objections. West Penn Power's preliminary objection was based on the allegation that the Complainant no longer lives at the service address. West Penn Power also alleged that the complaint is legally insufficient because the relief requested by the Complainant cannot be granted.

By interim order entered on December 18, 2023, I dismissed the preliminary objection based on the allegation that the Complainant no longer lives at the service address. A preliminary objection was not the correct motion to file to address that allegation that the Complainant no longer lived at the service address because West Penn Power introduced a new fact beyond the facts alleged in the complaint.⁶ I held ruling on the preliminary objection based on the legal insufficiency of the claims in the complaint in abeyance. West Penn Power did not file a further motion regarding the Complainant's residency.

On January 23, 2024, I issued an interim order which set forth a litigation schedule. That order directed counsel for West Penn Power, among other things, to attempt to confer with the Complainant regarding dates for a hearing. The interim order also provided instructions to the Complainant to withdraw her complaint if she was no longer interested in pursuing the allegations in her November 2020 complaint.

⁶ *Ridge v. State Emp. Ret. Bd.*, 690 A.2d 1312 (Pa. Cmwlth. 1997).

Pursuant to the January 23, 2024, Interim Order, West Penn Power filed a status report on May 9, 2024. In the status report West Penn Power represented that counsel had been unable to reach the Complainant. West Penn Power served the status report by First-class mail and also by email to the Complainant's email address. On May 9, 2024, I received an email from the Complainant which stated:

I do not live in Pennsylvania anymore. I moved in June 2021. Thank you. God bless. I could not open the file.
Signed, Keisha Truax.

Rather than scheduling a hearing that may not be necessary, I issued an interim order on May 21, 2024, which notified the Parties of my intent to construe the Complainant's email as a petition to withdraw her complaint.⁷ No Party objected to my treatment of Ms. Truax's email as a petition to withdraw her complaint. On June 11, 2024, I issued an interim order which finalized the treatment of Ms. Truax's email as a petition to withdraw and closed the record.⁸

FINDINGS OF FACT

1. The Complainant is Keisha Truax.
2. The Respondent is West Penn Power Company.
3. Ms. Truax no longer lives in Pennsylvania. (May 9, 2024, Email).

⁷ The Commission or presiding officer at any stage of an action or proceeding may waive a requirement of this subpart when necessary or appropriate, if the waiver does not adversely affect a substantive right of a party. 52 Pa. Code § 1.2(c); *see also Ulishney v. West Penn Power Co.*, Docket No. C-2021-3024487 (May 19, 2022) (finding an email from complainant to be a petition to withdraw complaint).

⁸ Ms. Truax's May 9, 2024, email was attached to the June 11, 2024, Interim Order.

4. Ms. Truax requested to withdraw her complaint.
5. West Penn Power Company does not object to the withdrawal.

DISCUSSION

The withdrawal of pleadings in a contested proceeding is governed by Section 5.94 of the Commission's regulations. This Section provides:

§ 5.94. Withdrawal of pleadings in a contested proceeding.

(a) 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, any objection thereto and the public interest, the presiding officer or the Commission will determine whether the withdrawal will be permitted.⁹

The Commission has no interest in mandating that Ms. Truax continue litigation when she no longer lives in Pennsylvania and does not wish to prosecute her complaint. The Company did not object to the withdrawal. Therefore, there is no negative impact on the public interest by permitting the withdrawal. The request to withdraw is granted.

⁹ 52 Pa. Code § 5.94(a).

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to the dispute. 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 setting forth the reasons for the withdrawal. 52 Pa. Code § 5.94(a).

3. After considering a petition to withdraw, 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. The withdrawal of this complaint has no negative impact on the public interest. 52 Pa. Code § 5.94.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the request of Keisha Truax to withdraw the complaint at Docket No. C-2020-3023039 is granted.

2. That the Formal Complaint of Keisha Truax in Keisha Truax v. West Penn Power Company at Docket No. C-2020-3023039 is withdrawn.

