

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Nancy Colbert

v.

PECO Energy Company

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C-2022-3036933

INITIAL DECISION

Before
Arlene Ashton
Administrative Law Judge

INTRODUCTION

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

HISTORY OF THE PROCEEDINGS

On November 21, 2022, Nancy Colbert (Complainant or Ms. Colbert) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO, Respondent or Company), indicating that the reason for the Complaint is “Subversion of the Rule of Law.” As to the requested relief, she cited a number of state and federal laws, including “Pennsylvania

Code Title 52 Public Utilities Chapter 57 Subchapter O Advanced Meter Deployment § 57.251. Purpose; § 57.255. EDC responsibilities regarding advanced metering.”

On December 13, 2022, PECO Energy Company filed an Answer with the Commission. On December 16, 2022, PECO filed an Amended Answer with New Matter (Answer). In its Answer, PECO denies all the material allegations of fact and conclusions of law in the Complaint and presents multiple arguments in response to the Complainant’s objection to the installation of a smart meter.¹ In the Answer, PECO expressed uncertainty as to the precise nature of the Complaint; however, PECO stated that it “believed that the Complainant objects to the installation of PECO’s Advanced Metering Infrastructure (“AMI”) meter, also known as a ‘smart meter.’” Answer at 2.

On December 20, 2022, Ms. Colbert filed a document with the Commission, in which she articulates numerous counterarguments to those presented by PECO in the Answer. Relevant here are a reference to a December 12, 2022 “attempt at forced installation” and Exhibit A to the document, which confirmed that the Complaint relates to PECO’s efforts to install a smart meter at her home.

¹ The Answer filed by PECO on December 13, 2022 referenced an Initial Decision and a Final Order which granted a request by the Complainant to withdraw a complaint filed in 2015 by the Complainant and her husband against PECO concerning their refusal to allow installation of a smart meter and dismissed the complaint at issue in that matter with prejudice. *See Colbert v. PECO Energy Co.* Docket No. C-2015-2515607 (Final Order issued Sept. 19, 2019). The New Matter included in the Answer filed by PECO on December 16, 2022 specifically referenced the Commission’s Final Order in support of its argument that the Complaint filed in this case should be dismissed on the grounds of *res judicata*. Answer at 8-10. The Answer was accompanied by a notice to plead informing the Complainant that if she did not file a written response denying or correcting the new matter within 20 days of the date of service, a decision could be rendered against her.

This matter was assigned to me on January 6, 2023. In light of the Commission’s November 4, 2020, general stay of all pending smart meter proceedings, on January 10, 2023, I issued an Order staying the proceedings in this matter until further direction by the Commission.

By Order entered November 14, 2023, at Smart Meter Procurement and Installation Docket No. M-2009-2092655 (*November 2023 Order*), the Commission lifted the general stay of smart meter proceedings and directed the Office of Administrative Law Judge (OALJ) to proceed with pending formal complaint proceedings as directed by the presiding administrative law judge.²

On January 12, 2024, I issued an Interim Order Establishing Initial Litigation Schedule (Interim Order #1).

On January 19, 2024, the Complainant sent an email to OALJ and PECO counsel indicating that she had attached a “Motion for Special Appearance” in connection with this matter.³

On March 26, 2024, PECO filed a Motion to Dismiss (March Motion to Dismiss) in which it asserted that the Complaint should be dismissed on three alternative

² The *November 2023 Order* is available on the Commission’s website www.puc.pa.gov using the document search feature and searching Docket Number M-2009-2092655.

³ In the Motion for Special Appearance, Ms. Colbert rejects the Commission’s jurisdiction over this matter. She contends that her Formal Complaint “derives from exercising the non-commercial, inalienable right to purchase electricity for her life needs under service agreement contract of monthly payment to PECO.” In addition, she states that she “acts by special appearance in the formal complaint C-2022-3036933 as one of the People in the Commonwealth of Pennsylvania, **not** as a legal entity ‘person,’ ‘individual,’ ‘party,’ or ‘petitioner’ and, having no commercial nexus with the

grounds: (1) the Complainant's claims are outside the Commission's jurisdiction; (2) under the doctrine of *res judicata*; and (3) the Complaint is barred by Pennsylvania law. The March Motion to Dismiss was accompanied by a Notice to Plead notifying the Complainant that if within 20 days from service of the Notice, *i.e.*, April 15, 2024, she did not file a response to the March Motion to Dismiss denying or correcting the March Motion to Dismiss, a decision might be rendered against her. The Complainant did not file a response to the March Motion to Dismiss.

On May 7, 2024, I issued an Order (May 7, 2024, Order) ruling on the March Motion to Dismiss, striking certain claims made by Ms. Colbert in the Formal Complaint because they were outside the Commission's jurisdiction. In addition, the May 7, 2024, Order directed the Complainant to file a more specific complaint on or before May 31, 2024.

The Complainant failed to comply with the May 7, 2024, Order.

Commonwealth has not consented to regulation by the Commonwealth. *See* Motion for Special Appearance.

On January 21, 2024, the Complaint sent an email to OALJ and PECO counsel stating that she is not under the jurisdiction of the Commission and demanding that all public officials and counsel involved in this matter swear an oath included in the email. On February 27, 2024, the Complainant re-sent a similar email message to OALJ and PECO counsel. On February 6, 2024, the Complaint sent an email to OALJ and PECO counsel attaching without further explanation a document titled "Judicial Notice." The document entitled Judicial Notice appears to be the Complainant's response to the directive in Interim Order #1 to identify any expert who would be presented to support of the party's position at an evidentiary hearing, including a summary of expected testimony (Notice of No Expert). At my request, the Complainant's correspondence to OALJ and PECO counsel have been included in the record to facilitate any review of this matter.

On June 5, 2024, PECO again filed a Motion to Dismiss (June Motion to Dismiss). In the June Motion to Dismiss, PECO reiterated its contention that the Complainant's Complaint should be dismissed because it is barred by Pennsylvania law.

On June 7, 2024, a Call-In Telephonic Hearing Notice was served on the parties scheduling an initial telephonic hearing on August 15, 2024, at 10:00 a.m. Also on June 7, 2024, a Prehearing Order was served on the parties which, *inter alia*, reminded the parties of the date and time of the scheduled hearing and the telephone number to call, and the passcode to enter, to participate in the hearing.

On June 7, 2024, the Complainant filed a document with the Secretary's Bureau entitled "SPECIAL APPEARANCE MOTION TO STRIKE WITH JUDICIAL NOTICE" (Special Appearance Motion).

On July 2, 2024, a Cancel / Reschedule Hearing Notice was served on the parties advising them that the hearing scheduled for August 15, 2024, had been cancelled and rescheduled for September 4, 2024, at 10:00 a.m.

On July 3, 2024, a Cancel/Reschedule Hearing Notice was served on the parties advising them that the hearing scheduled for September 4, 2024, had been cancelled and rescheduled for September 16, 2024, at 10:00 a.m.

On July 3, 2024, the Complainant sent an email to OALJ which read "READ PAGE 5 OF ORDER #4 LETTER TO CHIAVETTA." The email included two attachments, the first attachment is page 5 of Interim Order #1; the only full paragraph on that page is paragraph 4 which relates to the Complainant's ability to withdraw the Complaint and explains the procedure for doing so. On the attachment, Ms. Colbert had highlighted paragraph 4, with arrows, colored marker and the word "READ."

The second attachment to the July 3, 2024, email was a photocopy of document prepared in the form of a Memorandum to the Commission's Secretary July 2, 2024, informing the Commission that she was withdrawing the Formal Complaint she filed in this matter, stating, in part, "CASE-2022-3036933 IS CLOSED" (Case Closed Memo). The second attachment also included a photocopy of a receipt dated July 3, 2024, issued by the US Postal Service indicating that the document had been sent to the Commission's Secretary via certified mail.

Commission records reflect that the Case Closed Memo was received by the Secretary's Bureau on July 8, 2024.

On July 9, 2024, a Prehearing Order was served on the parties which, *inter alia*, reminded the parties of the date and time of the September 16, 2024, scheduled hearing and the telephone number to call, and the passcode to enter, to participate in the hearing.

On July 9, 2024, via email to OALJ, the Respondent communicated its agreement to the Complainant's request to withdraw the Formal Complaint that had been filed in this matter contained in the Case Closed Memo.

On July 10, 2024, the Commission Secretary issued a letter to the parties (Secretary's Letter) acknowledging receipt of the Case Closed Memo and the Respondent's agreement to the Complainant's request to withdraw her Complaint expressed therein. The Secretary's Letter also advised the parties that the Case Closed Memo would be placed on the record to cure any possible violation of the statutory prohibition on *ex parte* communications, and that an initial decision would be issued

regarding the Complainant's request to withdraw the Formal Complaint filed in this matter.

In light of the Complainant's request to withdraw her Complaint and the lack of opposition by PECO to the request, for the reasons discussed below the request will be granted.

FINDINGS OF FACT

1. The Complainant is Nancy Colbert.
2. The Respondent is PECO Energy Company.
3. On November 21, 2022, the Complainant filed a Complaint against PECO.
4. On December 13, 2022, PECO filed an Answer to the Complaint denying all material allegations in the Complaint and requesting that it be dismissed on the grounds of *res judicata*.
5. On December 16, 2022, PECO filed an Amended Answer and New Matter denying all material allegations in the Formal Complaint and requesting that it be dismissed on the grounds of *res judicata*.
6. On March 26, 2024, PECO filed a Motion to Dismiss arguing that the Complaint should be dismissed on three alternative grounds: (1) the Complainant's claims are outside the Commission's jurisdiction; (2) under the doctrine of *res judicata*; and (3) the Complaint is barred by Pennsylvania law.

7. The Complainant did not file a response to the March Motion to Dismiss.

8. On May 7, 2024, an Order was issued which, *inter alia*, directed the Complainant to file a more specific complaint on or before May 31, 2024.

9. The Complainant failed to comply with the May 7, 2024, Order or otherwise provide the information required under the May 7, 2024, Order.

10. On July 8, 2024, the Complainant sent a notice to the Secretary's Bureau via email informing the Commission that she was withdrawing the Formal Complaint, stating "CASE-2022-3036933 IS CLOSED."

11. The Respondent has no objection to the Complainant's request to withdraw the Formal 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. *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 the Complaint seeking to prevent the installation of a smart meter at her residence. Thereafter, the Complainant emailed a document to the Secretary's Bureau indicating that she wished to withdraw the Complaint.⁴ The Respondent indicated that it has no objection to the withdrawal of the Complaint.

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. Accordingly, the Complainant's Petition for Leave to Withdraw the Complaint may be granted.

⁴ Although the Complainant failed to specifically label her filing as a petition for leave to withdraw her Complaint, the Code specifically authorizes presiding officers to disregard defects, particularly in proceedings involving *pro se* litigants. *See* 52 Pa. Code § 1.2(a) and (d). *See also Ulishney v. West Penn Power Co.*, Docket No. C-2021-3024487 (Opinion and Order entered May 9, 2022) (accepting email from complainant as petition to withdraw complaint).

Further, the Complainant has failed to adhere to an Order issued in this matter. Failure to comply with the order of an Administrative Law Judge is grounds for dismissal. *Snyderville Cmty. Dev. Corp. v. Verizon Pa., Inc.*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006). In addition, this matter can be dismissed as an appropriate sanction under 52 Pa. Code § 5.371. The Complainant did not comply with the May 7, 2024, Order or otherwise provide the information required under that Order. Therefore, it is in the public interest to dismiss the Complaint.

Finally, in light of the above, the March and June Motions to Dismiss filed by PECO in this matter are moot and will also be dismissed in the ordering paragraphs below.

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. In determining whether to permit withdrawal of the pleading, the presiding officer or Commission must consider the petition, any objections thereto and the public interest. 52 Pa. Code § 5.94(a).

4. It is in the public interest to grant the Complainant's request to withdraw the Complaint. 52 Pa. Code § 5.94.

