

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Dawn Bancroft	:	
	:	
v.	:	C-2024-3046862
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
John M. Coogan
Administrative Law Judge

INTRODUCTION

This Initial Decision grants the unopposed Petition for Leave to Withdraw the Formal Complaint filed by Dawn Bancroft against PECO Energy Company because it is unopposed and in the public interest.

HISTORY OF THE PROCEEDING

On February 15, 2024, Dawn Bancroft (Ms. Bancroft or Complainant) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO or Company). PECO was served the Formal Complaint on February 27, 2024. In the Complaint, Ms. Bancroft asserts that PECO charged her for the wrong meter from April 2017 until December 2023. She further states that PECO refunded charges for four years of the incorrect billing, from December

2019 to December 2023, but will not refund her for the balance of the years she was incorrectly billed, i.e., from April 2017 to November 2019.

On March 18, 2024, PECO filed an answer. In its answer, PECO admitted that on November 3, 2023, a meter mix-up was discovered at the Complainant's place of business, Bucks Elite Fitness. PECO also stated that service was established by the Complainant on July 11, 2017 and that on November 8, 2023, PECO informed the Complainant about the meter mix-up and that she was incorrectly billed. PECO averred that the company cancelled bills issued from December 18, 2019 to November 6, 2023 totaling \$18,060.00 and, after correcting the billing for that period, reimbursed Ms. Bancroft \$11,547.25, which included interest. PECO further asserted in its answer that the Complainant is barred from obtaining a refund beyond four years, referencing 66 Pa.C.S. § 1312(a).

Also on March 18, 2024, PECO filed preliminary objections. PECO asserted that 66 Pa.C.S. § 1312(a) bars the Commission from awarding a refund that arose more than four years prior to the discovery of the meter mix-up. PECO also stated that review of billing issues that began in 2017 is beyond the three-year statute of limitations in 66 Pa.C.S. § 3314(a). The preliminary objections included a notice to plead. Ms. Bancroft did not file a reply to the preliminary objections.

On March 21, 2024, the Commission issued a motion judge assignment notice, assigning Administrative Law Judge (ALJ) Darlene Heep to this proceeding.

On June 24, 2024, the Commission issued an initial telephonic hearing notice setting a formal call-in telephonic hearing of the Formal Complaint for August 5, 2024, at 10:00 a.m.

On June 26, 2024, ALJ Heep issued an order sustaining PECO's preliminary objections in part.

On July 8, 2024, ALJ Heep issued a prehearing order, setting forth various rules that would govern the August 5, 2024 hearing.

The initial hearing convened on August 5, 2024 as scheduled. Dawn Bancroft appeared on her own behalf. Khadijah Scott, Esquire appeared on behalf of PECO. ALJ Heep continued the hearing to provide Ms. Bancroft an opportunity to retain counsel to pursue her complaint because the Formal Complaint was filed on behalf of Bucks Elite Fitness, an LLC.

On August 13, 2024, the Commission issued a telephonic hearing and judge change notice, setting a further telephonic hearing for September 4, 2024 at 10 a.m., and reassigning this proceeding from ALJ Heep to the undersigned. On August 14, 2024, I issued a prehearing order, setting forth various rules that would govern the September 4, 2024 hearing.

On September 3, 2024, I received an e-mail from Ms. Bancroft, requesting that her Formal Complaint be withdrawn. On September 4, 2024, counsel for PECO stated by e-mail that the Company did not object to Ms. Bancroft's request. The Commission issued a hearing cancellation notice on September 4, 2024, cancelling the scheduled hearing.

The record closed on September 3, 2024, the date I received the Complainant's withdrawal request. The Petition for Leave to Withdraw will be granted as it is unopposed and in the public interest.

FINDINGS OF FACT

1. The Complainant in this case is Dawn Bancroft.
2. The Respondent in this case is PECO Energy Company.
3. On February 15, 2024, Ms. Bancroft filed a Formal Complaint against PECO.
4. On March 18, 2024, PECO filed an answer and preliminary objections.
5. On June 26, 2024, ALJ Darlene Heep issued an order sustaining PECO's preliminary objections in part.
6. An initial evidentiary hearing was convened on August 5, 2024.
7. ALJ Heep continued the evidentiary hearing on August 5, 2024 to provide Ms. Bancroft an opportunity to retain counsel to pursue her complaint because the Formal Complaint was filed on behalf of Bucks Elite Fitness, a limited liability company. Tr. 4-10.
8. A further hearing was scheduled to be held on September 4, 2024.
9. On September 3, 2024, Ms. Bancroft requested by e-mail that her Formal Complaint be withdrawn.
10. On September 4, 2024, counsel for PECO stated by e-mail that the Company does not oppose Ms. Bancroft's request to withdraw her Formal Complaint.

DISCUSSION

Commission regulations address the withdrawal of pleadings in a contested proceeding in relevant part as follows:

§ 5.94. Withdrawal of pleadings in a contested proceeding.

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).

A “pleading” is defined as “[a]n application, complaint, petition, answer, motion, preliminary objection, protest, reply, order to show cause, new matter and reply to new matter or other similar document filed in a formal proceeding.” 52 Pa. Code § 1.8. This matter became a contested proceeding once PECO filed an answer to the Formal Complaint. *Pa. Pub. Util. Comm’n v. West Penn Utils.*, Docket No. C-2022-3031862 (Opinion and Order entered May, 18, 2023); *New Fizon Catering, Inc. v. PECO Energy Co.*, Docket No. C-2008-2065498 (Opinion and Order entered Jun. 24, 2009).

The Commission’s regulations provide that the Commission or presiding officer at any stage of an action or proceeding may disregard an error or defect of procedure which does not affect the substantive rights of the parties. 52 Pa. Code §

1.2(a). The liberal construction provisions apply with particularity in proceedings involving *pro se* litigants. 52 Pa. Code § 1.2(d).

Complainant's e-mail requesting that her Formal Complaint be withdrawn does not comply with the Commission's regulations at 52 Pa. Code § 5.94(a). In particular, the request was sent to the undersigned and counsel for PECO but was not filed with the Commission and did not set forth the reasons for the requested withdrawal. I will exercise my discretion pursuant to Sections 1.2(a) and 1.2(d) of the Commission's regulations and treat Complainant's email as a Petition for Leave to Withdraw the Complaint. *See Ulishney v. West Penn Power Co.*, Docket No. C-2021-3024487 (Opinion and Order entered May 19, 2022) (finding that an e-mail requesting withdrawal of a complaint constituted a petition to withdraw). PECO's substantive rights are not affected because PECO was included on Ms. Bancroft's e-mail request and had the opportunity to respond.

The Formal Complaint in this matter concerns a claim for a refund for alleged incorrect billing. Pursuant to the Commission's regulations above, I must consider any objection to the Petition, and the public interest, when determining whether the Petition will be granted. PECO did not object to the Petition. It would not be in the public interest to have the parties in this matter further litigate this proceeding when Complainant no longer wishes to pursue the Formal Complaint. Granting the Petition will save the parties and the Commission additional costs in time and money they would otherwise incur in further litigating this case. Furthermore, the Complaint does not contain any novel issues or issues of public interest. Therefore, the Petition will be granted in the ordering paragraphs below.

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 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 ten days. 52 Pa. Code § 5.94(a).
4. 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).
5. The Commission or presiding officer at any stage of an action or proceeding may disregard an error or defect of procedure which does not affect the substantive rights of the parties. 52 Pa. Code § 1.2(a).
6. The liberal construction provisions apply with particularity in proceedings involving *pro se* litigants. 52 Pa. Code § 1.2(d).
7. A party's e-mail request to withdraw his/her complaint constitutes a petition to withdraw a pleading under 52 Pa. Code § 5.94(a). *Ulishney v. West Penn Power Co.*, Docket No. C-2021-3024487 (Opinion and Order entered May 19, 2022).

8. It is in the public interest to allow Complainant to withdraw her Formal Complaint. 52 Pa. Code § 5.94.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Petition for Leave to Withdraw the Formal Complaint made by Dawn Bancroft at Docket Number C-2024-3046862 is granted;
2. That the Formal Complaint filed in the matter of Dawn Bancroft v. PECO Energy Company at Docket Number C-2024-3046862 is withdrawn;
3. That the Secretary's Bureau shall mark Docket Number C-2024-3046862 as closed.

Date: November 6, 2024

/s/
John M. Coogan
Administrative Law Judge