

Decision No. R20-0135

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19F-0741EG

JONATHAN L. WALLACE,

COMPLAINANT,

V.

PUBLIC SERVICE COMPANY OF COLORADO,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
DISMISSING COMPLAINT WITH PREJUDICE**

Mailed Date: March 2, 2020

I. STATEMENT

A. Summary.

1. This Decision construes the “Notice of Satisfaction and Withdrawal of Formal Complaint with Prejudice” as a motion for leave to withdraw the above-captioned Complaint; grants the Motion; dismisses the Complaint with prejudice; vacates the evidentiary hearing; and closes this proceeding.

II. BACKGROUND, FINDINGS, AND CONCLUSIONS

2. This Decision only recounts the procedural history necessary to understand the conclusions herein. On December 30, 2019, Mr. Jonathan L. Wallace initiated this matter by filing a Complaint against Public Service Company of Colorado (Public Service or the

Company) with the Public Utilities Commission (Commission). The Complaint contends that the Company's charges are inaccurate, and asks that Public Service be prohibited from discontinuing service while this matter is pending.

3. On December 31, 2019, the Commission's Director issued an Order to Satisfy requiring Public Service to satisfy the Complaint or file an answer to the Complaint within 20 days. At the same time, the Commission's Director scheduled a hearing on the Complaint for March 16, 2020 at 9:00 a.m., at a Commission hearing room.

4. On January 2, 2020, Administrative Law Judge (ALJ) G. Harris Adams issued a Decision conditionally prohibiting Public Service from discontinuing Mr. Wallace's service while this matter is pending. Decision No. R20-0001-I. The Company filed an answer to the Complaint on January 21, 2020.

5. On February 28, 2020, Public Service filed a "Notice of Satisfaction and Withdrawal of Formal Complaint with Prejudice," (Notice or Motion) signed by the Company and Mr. Wallace, per Rules 1308(d) and 1309(d) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1. The Notice states that after engaging in a mediation, the parties reached a confidential settlement, and that the Complaint has been satisfied. The Notice states that Mr. Wallace withdraws the Complaint with prejudice, and asks that the Commission close this proceeding.

6. The Notice cites Rule 1309(d), but that rule governs withdrawing an application or petition. 4 CCR 723-1. Even so, Rule 1309(d) provides a helpful framework for withdrawing a Complaint. Specifically, Rule 1309(d) allows parties to withdraw an application or petition by filing and serving a notice at least 45 days prior to the first day of the hearing. Rule 1309(d),

4 CCR 723-1. After that time, a party must file a motion seeking leave from the Commission to withdraw the application or petition. *Id.* In ruling on the motion, the Commission must consider whether good cause has been stated and whether other parties will be prejudiced if withdrawal is permitted. *Id.* The ALJ applies the same framework here.¹ The facts here most closely align with Rule 1309(d)'s requirement that a party must file a motion for leave to withdraw an application or petition when the first day of hearing is less than 45 days away. As such, the ALJ construes the Notice as a Motion seeking leave to withdraw the Complaint.

7. Because the parties agree that the Complaint has been satisfied, and Mr. Wallace seeks to withdraw it with prejudice, the ALJ concludes that the Motion establishes good cause to allow the Complaint to be withdrawn with prejudice. In addition, given that all the parties to this action seek the Complaint to be withdrawn, and agree that the Complaint is satisfied, the ALJ concludes that no party is prejudiced by allowing the Complaint to be withdrawn with prejudice. For these reasons, the ALJ grants the Motion, dismisses the Complaint with prejudice, and vacates the hearing.

8. Pursuant to § 40-6-109, C.R.S., the ALJ transmits the record of this proceeding, this recommended decision containing findings of fact and conclusions thereon, and a recommended order to the Commission.

¹ Generally, Rule 1309 governs amending pleadings and withdrawing applications, petitions, advice letters, and tariffs. 4 CCR 723-1. The ALJ notes that Rule 1309 does not include language addressing how a party may withdraw a complaint. *Id.*

III. ORDER

A. The Commission Orders That:

1. Consistent with the above discussion, the Notice of Satisfaction and Withdrawal of Formal Complaint with Prejudice, is construed as a motion and is granted.

2. The above-captioned Complaint is dismissed with prejudice.

3. The hearing scheduled in this matter for March 16, 2020 is vacated.

4. Proceeding No. 19F-0741EG is closed.

5. This Recommended Decision will be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

6. As provided by § 40-6-106, C.R.S., copies of this Recommended Decision will be served upon the parties, who may file exceptions to it.

a. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the recommended decision is stayed by the Commission upon its own motion, the recommended decision will become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b. If a party seeks to amend, modify, annul, or reverse a basic finding of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge; and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

7. If exceptions to this Recommended Decision are filed, they must not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director