

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RCN TELECOM SERVICES OF PHILADELPHIA, INC.,
Complainant,
v.
PECO ENERGY COMPANY and INFRASTRUCTURE INCORPORATED, f/k/a EXELON INFRASTRUCTURE SERVICES, INC.,
Respondents.
File No. PA 01-003

ORDER

Adopted: November 6, 2003

Released: November 7, 2003

By the Chief, Market Disputes Resolution Division, Enforcement Bureau:

1. On March 16, 2001, RCN Telecom Services of Philadelphia, Inc. ("RCN") filed a complaint in the captioned matter against PECO Energy Company ("PECO") alleging that PECO's pole attachment rate was unjust and unreasonable ("Complaint"). On May 4, 2001, RCN amended the Complaint to add InfraSource Incorporated ("InfraSource") as a defendant and to include allegations that the defendants' make-ready charges were unjust and unreasonable ("Amended Complaint"). On December 18, 2002, the Enforcement Bureau issued an order that bifurcated the rate issues from the make-ready issues and resolved the rate issues ("Phase I Order").¹ On January 17, 2003, both PECO and InfraSource filed separate Petitions for Reconsideration of the Phase I Order. Subsequently, the parties reached a negotiated settlement of the make-ready issues, and the Commission granted RCN's motion to withdraw the Amended Complaint.²

2. On November 3, 2003, InfraSource filed a Motion requesting that its Petition for Reconsideration be dismissed with prejudice.³ The Motion, which does not address the separate

1 RCN Telecom Services of Philadelphia, Inc. v. PECO Energy Company and Exelon Infrastructure Services, Inc., Phase I Order, 17 FCC Rcd 25238 (Enf. Bur. 2002), petitions for reconsideration pending.

2 RCN Telecom Services of Philadelphia, Inc. v. PECO Energy Company and InfraSource Incorporated, f/k/a Exelon Infrastructure Services, Inc., Order, File No. PA 01-003, DA 03-3308 (rel. Oct. 22, 2003).

3 Motion of InfraSource Incorporated to Withdraw Petition for Reconsideration, File No. PA 01-003 (November 3, 2003) ("Motion").

Petition for Reconsideration filed by PECO, explains that, as a result of the resolution of the parties' make-ready dispute, the "claims and controversies contained in InfraSource's Petition for Reconsideration have been rendered moot."⁴ The Motion states that InfraSource has contacted counsel for RCN, and that RCN does not oppose the Motion.⁵

3. We are satisfied that dismissing InfraSource's Petition for Reconsideration will serve the public interest by promoting the private resolution of disputes and by eliminating the need for the expenditure of further time and resources of the parties and this Commission.

4. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 4(j), and 224 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 224, and the authority delegated in sections 0.111, 0.311, and 1.106 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311, and 1.106, that the Motion to Dismiss is GRANTED and that the InfraSource Petition for Reconsideration of the Phase I Order IS DISMISSED with prejudice.

FEDERAL COMMUNICATIONS COMMISSION

Alexander P. Starr
Chief, Market Disputes Resolution Division
Enforcement Bureau

⁴ *Id.* at 1-2.

⁵ *Id.* at 2.