

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: February 4, 2004

Released: February 5, 2004

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. On May 4, 2001, RCN amended the Complaint to add InfraSource Incorporated as a defendant and to include allegations that the defendants' make-ready charges were unjust and unreasonable. On December 18, 2002, the Enforcement Bureau bifurcated the rate issues from the make-ready issues and resolved the rate issues in the Phase I Order. On January 17, 2004, PECO petitioned for reconsideration of the Phase I Order.

1 Pole Attachment Complaint, File No. PA 01-003 (filed Mar. 16, 2001) ("Complaint").

2 Amended Complaint, File No. PA 01-003 (filed May 4, 2001) ("Amended Complaint").

3 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) ("Phase I Order"). The parties subsequently settled the make-ready issues, and, on October 16, 2003, RCN moved to withdraw the make-ready issues in its Amended Complaint. Motion of RCN Telecom Services of Philadelphia, Inc. to Withdraw Complaint, File No. PA 01-003 (filed Oct. 16, 2003). On October 22, 2003, the Enforcement Bureau released an order granting RCN's motion. RCN Telecom Services of Philadelphia, Inc. v. PECO Energy Company and InfraSource Incorporated f/k/a/ Exelon Infrastructure Services, Inc, Order, DA 03-3308, 2003 WL 22399650 (Enf. Bur. rel. Oct. 22, 2003).

4 Petition for Reconsideration, File No. PA 01-003 (filed Jan. 17, 2003) ("Petition for Reconsideration").

2. On January 29, 2004, PECO requested that the Commission deem “withdrawn with prejudice all claims, as to all parties, that are currently pending and unresolved arising out of PECO’s Request for Reconsideration of the Commission’s Phase I Order in the above-captioned case.”⁵ The Motion further states that “all matters in this docket have now been resolved by amicable resolution between the parties.”⁶ RCN does not oppose the Motion.⁷

3. We are satisfied that allowing withdrawal of the Petition for Reconsideration will serve the public interest by promoting the private resolution of disputes and by eliminating the need for further litigation and 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 and 0.311 of the Commission’s rules, 47 C.F.R. §§ 0.111 and 0.311, that the Motion to Withdraw Request for Reconsideration IS GRANTED and that all claims in the above-captioned proceeding ARE DISMISSED WITH PREJUDICE.

FEDERAL COMMUNICATIONS COMMISSION

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

⁵ Motion of PECO Energy Company to Withdraw Complaint, File No. PA-01-003 (filed Jan. 29, 2004) (“Motion”) at 1.

⁶ Motion at 2.

⁷ See Letter from L. Elise Dieterich, Attorney for RCN, to Jonathan Reel, Staff Attorney, Market Disputes Resolution Division, Enforcement Bureau, FCC, File No. PA 01-003 (filed Jan. 30, 2004).