

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

Armstrong Utilities, Inc.,
Complainant,
v.
PECO Energy Company,
Defendant.
File No. EB-03-MD-006

ORDER

Adopted: March 9, 2004

Released: March 10, 2004

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

1. On April 7, 2003, Armstrong Utilities, Inc. ("Armstrong") filed a complaint in the above-captioned matter against PECO Energy Company ("PECO") alleging that PECO's pole attachment rate was unjust and unreasonable ("Complaint"), in violation of 47 U.S.C. § 224. On September 22, 2003, Armstrong and PECO informed the Commission that they intended to engage in settlement negotiations, and asked the Commission to postpone resolution of the dispute while the parties attempted to negotiate a settlement agreement. The parties twice reported continuing progress in their negotiations, and submitted joint requests that the Complaint remain in abeyance.

2. On February 26, 2004, Armstrong and PECO filed a Joint Motion seeking leave to withdraw the Complaint with prejudice. The Joint Motion states that "Armstrong and PECO have resolved the matters pending in this litigation, and therefore request that the Commission

1 Letter from Nicole E. Paolini, counsel for Armstrong, to Jonathan Reel, attorney, Market Disputes Resolution Division, Enforcement Bureau, FCC, File No. EB-03-MD-006 (Sept. 22, 2003).

2 Letters from Nicole E. Paolini, counsel for Armstrong, to Jonathan Reel, attorney, and Lisa Griffin, Deputy Division Chief, Market Disputes Resolution Division, Enforcement Bureau, FCC, File No. EB-03-MD-006 (Dec. 9, 2003 and Jan. 7, 2004).

3 Joint Motion of Armstrong Utilities, Inc. and PECO Energy Company to Withdraw Complaint with Prejudice, File No. EB-03-MD-006 (Feb. 26, 2004) ("Joint Motion").

terminate this proceeding.”<sup>4</sup> We are satisfied that allowing withdrawal of the Complaint with prejudice 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.

3. 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 Joint Motion to Withdraw the Complaint with Prejudice IS GRANTED and that this proceeding is hereby terminated.

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>4</sup> Joint Motion at 1.