

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Stephen and Nancy McIntyre	:	
	:	
v.	:	C-2019-3014822
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
F. Joseph Brady  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision grants the Complainants’ request to withdraw their formal Complaint because there is no objection and it is in the public interest to grant the request.

**HISTORY OF THE PROCEEDING**

On December 4, 2019, Stephen and Nancy McIntyre (Complainants) filed a formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission) regarding the planned placement of an electrical transformer box partially on their property.

On December 17, 2019, PECO filed an Answer to the Complaint denying all material allegations of fact.

By Hearing Notice dated February 4, 2020, an Initial In-Person Hearing was scheduled for March 10, 2020, and the matter was assigned to me.

A Prehearing Order was issued on February 10, 2020, reminding the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to this proceeding, and directing the submission of documents prior to the hearing.

On March 5, 2020, I issued an Order granting the Complainants' unopposed request for a continuance due to their Counsel's unavailability.

By Cancellation/Reschedule Hearing Notice dated March 5, 2020, the Initial In-Person Hearing was rescheduled to April 1, 2020.

Due to the Covid-19 pandemic, the In-Person hearing was changed to a telephonic hearing and rescheduled for May 19, 2020, by Call-In Telephone Cancellation/Reschedule Hearing Notice issued on April 22, 2020.

The hearing convened as scheduled on May 19, 2020. The Complainants appeared and were represented by Louis S. Schwartz, Esquire. The Respondent appeared and was represented by Khadijah Scott, Esquire.

At the outset of the hearing, Mr. Schwartz stated the Complainants wished to withdraw their Complaint. Tr. 4. PECO had no objections to the Complainants' request to withdraw. Tr. 5.

The record closed on May 27, 2020, upon my receipt of the hearing transcript.

#### FINDINGS OF FACT

1. The Complainants are Stephen and Nancy McIntyre.
2. The Respondent is PECO Energy Company.

3. On December 4, 2019, the Complainants filed a Complaint against PECO regarding the planned placement of an electrical transformer box partially on their property.

4. On December 17, 2019, PECO filed an Answer denying all material allegations of fact.

5. By Call-In Telephone Cancellation/Reschedule Hearing Notice dated April 22, 2020, a Call-In Telephone Hearing was scheduled for May 19, 2020.

6. The hearing convened as scheduled on May 19, 2020. Tr. 1-6.

7. The Complainants appeared for the hearing with Counsel and requested to withdraw their Complaint. Tr. 4.

8. The Respondent does not object to the Complainants' request to withdraw their Complaint. Tr. 5.

### DISCUSSION

The Commission's Rules of Practice and Procedure at 52 Pa.Code § 5.94 permit parties to petition to withdraw pleadings in a contested proceeding:

Except as provided in subsection (b), 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).

The petition is granted only by permission of the presiding officer or the Commission. The presiding officer or Commission must consider the petition, any objections thereto, and the public interest in determining whether to permit withdrawal of the pleading. 52 Pa.Code § 5.94.

A presiding officer or the Commission may disregard an error or defect of procedure or waive a requirement that does not adversely affect a substantive right of a party. 52 Pa. Code §§ 1.2(a),(c). Thus, the Complainants' oral request to withdraw their Complaint, through Counsel at the hearing, will be treated as a petition for leave to withdraw their Complaint pursuant to 52 Pa.Code § 5.94(a).

In this case, after consultation with their Counsel, the Complainants indicated that they want to withdraw their Complaint. PECO indicated that it does not oppose the Complainants' request to withdraw their Complaint. Under these circumstances, granting the Complainants' request to withdraw their Complaint is in the public interest because doing so will eliminate the need for litigation and save the parties any additional costs in time and money they would otherwise incur litigating the case. Accordingly, the Complainants' request to withdraw their Complaint is granted.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to and subject matter of this proceeding. 66 Pa.C.S. § 701.

2. The Commission's Rules of Practice and Procedure permit parties to withdraw pleadings in a contested proceeding by permission of the presiding officer or Commission. 52 Pa.Code § 5.94.

3. A presiding officer or the Commission may disregard an error or defect of procedure or waive a requirement that does not adversely affect a substantive right of a party. 52 Pa. Code §§ 1.2(a),(c).

4. It is in the public interest to grant the Complainants' request to withdraw their Complaint.

ORDER

THEREFORE,

IT IS ORDERED:

1. That Stephen and Nancy McIntyre's Petition for Leave to Withdraw their Complaint filed at Docket No. C-2019-3014822 is granted.
2. That the Complaint of Stephen and Nancy McIntyre against PECO Energy Company filed at Docket No. C-2019-3014822 is withdrawn; and
3. That Docket No. C-2019-3014822 be marked closed.

Date: July 13, 2020

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/s/  
F. Joseph Brady  
Administrative Law Judge