

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**  
**Harrisburg, PA 17120**

**Stephen and Nancy J. Ulishney**  
vs.  
**West Penn Power Company**

**Public Meeting of May 12, 2022**  
**3024487-ALJ**  
**Docket No. C-2021-3024487**

**MOTION OF CHAIRMAN GLADYS BROWN DUTRIEUILLE**

Before the Commission for consideration is the Complaint filed on February 16, 2021, by Stephen and Nancy J. Ulishney alleging that their refrigerator was damaged by the numerous recloser events that occurred on the distribution line serving their residence. Following a prehearing conference attended by both Parties, an onsite investigation, and a number of postponements, the evidentiary hearing was scheduled for January 11, 2022.

By email dated December 23, 2021, West Penn served the Complainants with a Motion to Compel Discovery. By email dated December 24, 2021, sent to West Penn's attorney and the Administrative Law Judge (ALJ), the Complainants stated that they no longer wanted a hearing.

By email dated January 7, 2022, West Penn requested that the hearing scheduled for January 11, 2022, be converted to a prehearing conference to discuss its Motion to Compel Discovery. On January 7, 2022, the ALJ emailed the Parties and informed them that the hearing would proceed as scheduled, and that West Penn's Motion would be addressed at the hearing. Later the same day, via email, Complainants responded to the January 7, 2022 emails. The Complainants referenced their December 24, 2021 email containing their statement that they no longer wanted a hearing, adding that because the Commission cannot grant damages to claimants, they had no further use for the Commission or the scheduled hearing.

The hearing was convened as scheduled on January 11, 2022. The Complainants did not appear. ALJ Johnson granted West Penn's Motion to Dismiss the Complaint, with prejudice.

Section 5.94(a) of the Commission's regulations provides that 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 other parties. 52 Pa. Code § 5.94(a). Section 5.94 further provides that the petition must set forth the reasons for the withdrawal and that a party may object to the petition to withdraw within 10 days. *Id.*

The Complainants' December 24, 2021 and January 7, 2022 correspondence clearly communicated that they did not intend to pursue their Complaint before the Commission. I believe that the Complainants' emailed correspondence should have been deemed a Petition to Withdraw (Petition) their Complaint.<sup>1</sup>

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<sup>1</sup> The Commission or presiding officer at any stage of an action or proceeding may waive a requirement of this subpart when necessary or appropriate, if the waiver does not adversely affect a substantive right of a party. 52 Pa. Code § 1.2(c).

Having considered the Petition, I find there is no harm to the public interest in granting the Complainants' request to withdraw their Complaint. Since the Commission must also consider any objections to the Petition, it is appropriate to establish a 10-day objection period as set forth in Section 5.94.

**THEREFORE, I MOVE THAT:**

1. The Complainants' December 24, 2021 and January 7, 2022 emails shall be deemed a Petition to Withdraw consistent with 52 Pa. Code § 5.94.
2. If no objection to the Petition to Withdraw is received within ten days of the entry date of the Opinion and Order in this matter, the Petition to Withdraw shall be deemed granted and this docket shall be marked closed.
3. The Office of Special Assistants shall prepare an Opinion and Order consistent with this Motion.



**May 12, 2022**  
**Date**

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**Gladys Brown Dutrieuille, Chairman**