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July 7, 2010

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor
Harrisburg, PA 17120

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JUL 7 2010

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**Re: Gutnram Weissenberger et al. v. PECO Energy Company
PUC Docket No. C-2010-2182281**

Dear Ms. Chiavetta:

Enclosed for filing with the Commission are the following documents and copies in the matter referenced above.

___	Answer (1 original)
___	Motion for Continuance (1 original)
___	Motion for Judgment on the Pleadings (1 original)
<u> X </u>	Preliminary Objection (1 original)
___	Exceptions (1 original)
___	Reply Exceptions (1 original)
___	Brief (1 original)
___	Reply Brief (1 original)

I have enclosed a Certificate of Service showing that a copy of the above document was served on the interested parties. Also enclosed is an extra copy of this letter, which I request that you date stamp and return to me in the envelope provided as proof of filing. Thank you for your time and attention on this matter.

Very truly yours,



Ward Smith
Counsel for PECO Energy Company

Enc.

Scheduling recommendation: CALL OF THE DOCKET: ___ NON-CALL OF THE DOCKET: X

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

GUNTRAM WEISSENBERGER,
ET AL.

v.

PECO ENERGY COMPANY

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DOCKET NO. C-2010-2182281

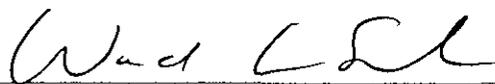
NOTICE TO PLEAD

Pursuant to 52 Pa. Code §§ 5.101 and 5.62(c), you are hereby notified that you must file a written response denying or correcting the enclosed Preliminary Objection of PECO Energy Company, within 10 days from service of this notice, and if you do not so file an Order against you may be entered in this matter. All pleadings, such as a Reply to Preliminary Objection, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for PECO Energy Company, Ward Smith, and where applicable, the Administrative Law Judge presiding over the issue.

File with:
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor
Harrisburg, PA 17120

With a copy to:
Ward Smith, Esq.
Exelon Corporation
2301 Market Street, S23-1
Philadelphia, PA 19103

Dated at Philadelphia, PA, July 7, 2010



Ward Smith
Counsel for PECO Energy Company
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

GUNTRAM WEISSENBERGER, :
ET AL. :

v. :

DOCKET NO. C-2010-2182281

PECO ENERGY COMPANY. :

**PRELIMINARY OBJECTION OF PECO ENERGY COMPANY CLAIMING
INSUFFICIENT SPECIFICITY OF PLEADING**

Respondent, PECO Energy Company ("PECO Energy"), pursuant to 52 Pa. Code § 5.101(a)(3) respectfully submits this preliminary objection claiming insufficient specificity of a pleading. PECO recognizes that the Complaint in this matter is extensive, and that Commission typically provides substantial latitude in the level of specificity required in initial pleadings such as complaints. However, for the reasons set forth below, PECO believes that the Commission should order Guntram Weissenberger, *et al.* to file a more specific pleading in this matter.

1. The matter comes before the Commission pursuant to an Order of the Court of Common Pleas of Delaware County. The procedural background leading to that Order is set forth in the Complaint at paragraphs 1-7. For purposes of this Preliminary Objection, it is most important to note that the Court of Common Pleas ordered that: "*All liability issues* raised in the [civil] Complaint's Counts VI, VII and VIII are bifurcated from damages and shall be referred to and resolved by the Pennsylvania Public Utility Commission." *See* March 26, 2010 Amended Order, Paragraph 1, which was appended to the Complaint as Exhibit D. (emphasis added).

2. There is a significant mismatch between the liability issues set forth in the Complaint in this docket and the liability issues raised in the civil complaint Counts VI, VII,

and VIII. Put most simply, there are many liability issues raised in the civil complaint – and which the Court therefore ordered to be addressed in this PUC proceeding – which are not pled in the PUC complaint with sufficient specificity.

3. The Complaint in the instant PUC docket is very limited in the liability issues that it raises. The Complaint itself alleges that the matter before the Commission is limited to one legal issue, and one factual issue. With respect to the legal issue set forth in the Complaint, that issue is pled as follows:

Complaint Paragraph 8. The issue of law to be determined is whether are the Complainants are “Landlord Ratepayers” under the provisions of Section 1533 of the Public Utility Code (“Code”) 66 Pa. C.S. § 1521, because the status of the Complainants as “Landlord Ratepayers” will determine their liability for the electric service provided by PECO Energy to the 1,153 separately metered residential apartment units owned by the Complainants”

With respect to the factual issue set forth in the Complaint, the issue is pled as follows:

Complaint Paragraph 10. The Complainants, in filing this complaint before the PUC, assert that the essential issue in dispute involves nothing more than an issue of contract law and a critical finding of fact to determine if, when, and under what circumstances the Complainants ever obligated themselves to pay for electric service supplied by PECO Energy to 1,153 separately metered residential apartments which the Complainants own but rent to various private individuals.¹

4. The civil complaint, however, raised numerous other “liability issues.”² While that document speaks for itself, PECO notes, by way of example only, that Count VII, Paragraph 132(a) of the Civil Complaint alleges that: “PECO applied the improper tariffs overcharging the Plaintiffs for utility services;” Paragraph 132 (b) claims that: “PECO violated

¹ The factual issue is re-characterized, in paragraph 13, as “The question of fact to be determined by the PUC is nothing more than an inquiry into whether or not the Complainants (not ConServe) ever entered into an agreement with PECO Energy whereby the Complainants obligated themselves to install master electric transformers, separate service lines and/or sub-meters to each individual tenant’s residential unit in the 1,153 residential apartment units which they owned.

² The civil complaint was appended to the PUC Complaint as Exhibit A.

its tariffs by failing to bill the Plaintiffs and notify Plaintiffs of the accrued arrearages;” Paragraph 132(c) claims that: “PECO violated its tariffs when it failed to bill the accounts at insufficient intervals;” Count VIII, Paragraph 137 claims that: “Defendant PECO owed a duty to the Plaintiffs to know, represent, and disclose the condition of the Plaintiffs’ accounts relative to the Properties;” Paragraph 139 claims that: “Defendant PECO breached the duties owed to Plaintiffs and acted negligently in that it (a) failed to provide Plaintiffs with written or oral notice of the defaults in the payments of the PECO bulk meter electric accounts at the Properties, (b) failed to properly supervise its commercial account representative;” and Paragraph 140 claims that: “The Defendant PECO breached the aforementioned duty to inform the Plaintiffs and by negligently failing to disclose the hundreds of thousands of dollars of accrued billing invoices since May 2007 at the four Properties.”

5. When PECO requested that the Court of Common Pleas send certain liability issues to the Commission, its request – which the Court later granted – was very broad-ranging. As PECO stated (¶ 9) in its Preliminary Objections in the civil proceeding,³ the civil complaint alleges that PECO engaged in unreasonable utility service for at least seven independent reasons:

With respect to PECO Energy, Plaintiffs allege that PECO Energy provided unreasonable electric utility service by:

- (1) wrongfully claiming Plaintiffs were the “Landlord Ratepayers” subject to the appointment of a receiver under the Public Utility Code, 66 Pa. C.S. § 1521 (Complaint at ¶¶ 40, 124);
- (2) improperly altering the account status for each Property at ConServe’s request to provide for plaintiffs as the responsible parties for purposes of billings for the master-metered electrical services at the Properties, for all relevant accounts, without notice to or the consent of Plaintiffs (Complaint at ¶¶ 57, 124-125);
- (3) applying improper tariff rates and overcharging the Plaintiffs for electric utility service at the Properties since September 25, 2003 (Complaint ¶ 132);

³ PECO’s civil Preliminary Objections were attached to the PUC Complaint as Exhibit B.

(4) failing to reasonably administrate its Electric Service Tariff accounts (Complaint at ¶ 18);

(5) billing the subject accounts at improper intervals and charging late fees in violation of tariffs (Complaint at ¶ 132);

(6) failing to properly notify Plaintiffs that arrearages were accruing on accounts for the Properties owned by Plaintiffs in violation of tariff requirements (Complaint at ¶¶ 53, 124);

(7) violating tariffs by failing to follow PECO Energy's internal process and procedure of having a PECO Energy account representative handle Plaintiffs' large commercial accounts. (Complaint at ¶¶ 52, 124, 132, 137, 139).

6. It was this civil Preliminary Objection that the Court of Common Pleas granted, ordering Weissenberger, *et al.* to remove "all liability issues" to the Commission. Yet the PUC Complaint in this proceeding does not even discuss many of these purported liability issues that were included in the civil complaint.

7. Indeed, at no place in the PUC Complaint do Weissenberger, *et al.* allege that PECO engaged in unreasonable utility service, that PECO misapplied its tariffs, or that PECO had the duties described above (or attempt to describe the genesis of such duties). These are the precise issues that the Court of Common Pleas ordered by removed to the PUC, yet the Complaint does not raise them. Instead, the PUC Complaint claims that this matter is limited to one narrow issue of law and one factual determination of contract law.

8. Allowing this matter to proceed with the Complaint in its as-pled level of specificity would not be appropriate. If the matters that are to be decided in this PUC docket are truly limited to the matters that are set forth in the PUC Complaint, then allowing this matter to proceed to hearing on those limited matters would be a waste of the resources of the Commission and the parties since, even after a full determination of the as-pled issues, there would still be

numerous open PUC-jurisdictional liability issues (involving claims of unreasonable utility service, inappropriate tariff application, etc.) that would not have been resolved in the PUC proceeding. If, on the other hand, Complainant is later allowed to expand the scope of its Complaint beyond those matters specifically set forth in the Complaint, the regulatory litigation will inevitably develop in a hopscotch fashion that will also waste the resources of the Commission and the parties.

9. PECO also alleges that, if this allowed to proceed with the PUC Complaint at the as-pled level of specificity, PECO's rights will be infringed because it may in effect be required to respond to, and defend, liability allegations that are not included in the PUC Complaint, but instead are "revealed" as the PUC case develops.

10. PECO also notes that this case may well have substantial policy and precedential value to the Commission. As set forth in PECO's civil Preliminary Objection, this case involves the question of whether a property owner may extricate itself from the normal Landlord Ratepayer obligations by the mechanism of hiring a third party, such as ConServe, to manage those obligations for it. As PECO stated in its civil Preliminary Objection (§§ 28-30):

28. Furthermore, a determination that Plaintiffs are, or are not, a "Landlord Ratepayer" will involve not only the respective rights of Plaintiffs, PECO Energy, and ConServe in the instant proceeding, but also will determine certain important rights of the tenants at the various Properties. Moreover, because a determination of this issue may have precedential value for other, similar landlord/tenant situations, a determination of whether Plaintiffs are a "Landlord Ratepayer" could affect the rights and responsibilities of other tenants and landlords in the Commonwealth.

29. These policy implications include potential changes to the manner in which entities such as Plaintiffs may voluntarily relinquish the responsibility to provide utility service at their leased premises; the rights of certain property owners such as Plaintiffs to receive statutory notice prior to utilities terminating service to the property; and the rights of tenants pay utility bills and then to deduct those amounts from their rents or seek reimbursement without retribution. Such a determination also implicates the policy

implications of whether “landlord ratepayer,” and “landlord” will be deemed to be synonymous terms; whether Plaintiffs uncontested status as “owner” should affect the evaluation of whether it is a landlord ratepayer; and whether both Plaintiffs and ConServe should, in the public interest, be held to have the rights and responsibilities of being a landlord ratepayer.

30. All of these policy considerations must further be viewed against the backdrop of the PUC having, for many years, actively interpreted and applied the relevant provisions of the Public Utility Code, both as a standalone statement of the respective rights of utilities, landowners and tenants and insofar as those rates interplay with other public utility laws and policies. Collectively, these factors leave no doubt that this matter should be deferred to the PUC.

These potential policy and precedential implications further counsel that this proceeding should be initiated only via a PUC Complaint that fully, and specifically, articulates the claims that Complainant has against PECO.

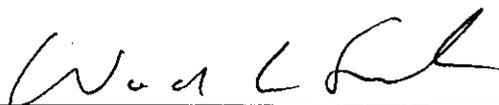
11. PECO recognizes that, normally, a Complainant is allowed free choice to allege, or to not allege, whatever claims it wishes to make in a Complaint. PECO also recognizes that Weissenberger, *et al.* may have abandoned some of the liability theories set forth in the civil complaint, and that the choice to not include them in this PUC pleading may thus be purposeful. However, given all of the factors described in this Preliminary Objection, PECO respectfully submits that the Commission should order Weissenberger, *et al.* to file a Complaint that sets forth with specificity each and every liability issue that Weissenberger, *et al.* intend to pursue before the PUC, so that there is no question as to which theories of liability are still being pursued, and which have been abandoned.

12. Finally, PECO notes that granting this Preliminary Objection will not cause any prejudice to Weissenberger, *et al.* The Complainants are a large commercial concern that are represented in this matter by an established, respected law firm. Perhaps more importantly, all of the liability issues which is PECO is requesting be pled with specificity in the PUC Complaint

are already developed, in one form or another, in the 156-paragraph civil complaint. It therefore will not be burdensome to Weissenberger *et al.* to require them to parse the civil complaint and plead, with specificity, "all liability issues," as required by the Court's March 26, 2010 Amended Order.

WHEREFORE, PECO Energy Company respectfully requests that this Honorable Commission issue an Order requiring Complainant to file a more specific pleading or, if Complainant does not make such a filing, dismissing the Complaint with prejudice.

Respectfully Submitted,



Ward Smith
Counsel for PECO Energy Company
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MAR 7 2010

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SECRETARY'S BUREAU

BEFORE THE
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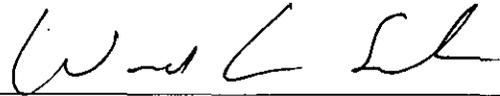
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VERIFICATION

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

I, Ward Smith, hereby declare that I am an attorney representing PECO Energy Company; that as such I am authorized to make this verification on its behalf; that the facts set forth in the foregoing Pleading are true to the best of my knowledge, information and belief, and that I make this verification subject to the penalties of 18 Pa. C.S. § 4904 pertaining to false statements to authorities.



Ward Smith

Date: July 7, 2010

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of PECO Energy Company's Preliminary Objections in the above matter upon all interested parties by mailing a copy thereof Certified mail, properly addressed and postage prepaid to:

Joseph T. Doyle, Esquire
Law Offices of Vincent B. Mancini & Associates
414 East Baltimore Pike
Media, Pennsylvania 19063
Counsel for Guntram Weissenberger, et al.

Dated at Philadelphia, Pennsylvania, July 7, 2010.



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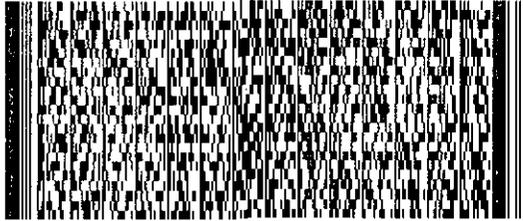
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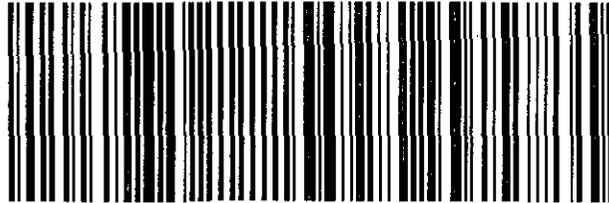
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