

**Legal Department**

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August 11, 2010

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

## RECEIVED

AUG 12 2010

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

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

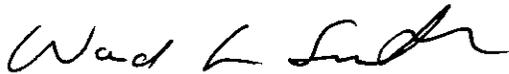
Dear Ms. Chiavetta:

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

WS/zr

Enc.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**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:

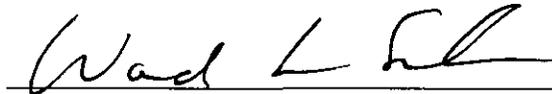
Ward Smith, Esq.  
Exelon Corporation  
2301 Market Street, S23-1  
Philadelphia, PA 19103

**RECEIVED**

AUG 12 2010

**PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU**

Dated at Philadelphia, PA, August 11, 2010



Ward Smith  
Counsel for PECO Energy Company  
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ward.smith@exeloncorp.com

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

GUNTRAM WEISSENBERGER,  
ET AL.

v.

PECO ENERGY COMPANY

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DOCKET NO. C-2010-2182281

**SECOND 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 First Amended 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. This Commission proceeding began with the filing of a Complaint by Weissenberger, *et al.* on or about June 14, 2010.
2. On or about July 7, 2010, PECO filed a Preliminary Objection Claiming Insufficient Specificity of Pleading (“PECO’s First PO”). A copy of PECO’s First PO is attached to this filing as Exhibit A. In broad terms, PECO’s First PO noted that this matter is before the Commission pursuant to an Order of the Court of Common Pleas of Delaware County, 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 initial Complaint as Exhibit D. PECO’s First Preliminary Objection also noted that there was a significant mismatch between the liability issues set forth in the initial Complaint in this docket and the liability issues raised in the civil complaint Counts VI, VII, and VIII. PECO specifically noted (PECO’s First PO, ¶ 5) that, in order to comply with the order of the Civil Court, the Complaint needed to set forth its specific liability claims in at least seven areas to reflect their liability claims in civil court, including that:

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);
- (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).

3. Weissenberger, *et al.* subsequently filed a First Amended Complaint in this matter that closely conforms to the Complaint as filed in the Civil Court – in most respects, it is simply a reduced cut-and-paste version of the civil complaint -- in which they provide additional information on many of the issues identified in PECO's First PO. However, as set forth in the remainder of this Preliminary Objection, certain of the liability issues that Weissenberger *et al.* were ordered by the civil court to plead to the Commission have not yet been pled with sufficient specificity to allow this matter to proceed with all parties and the Commission having a full understanding of the basis for the Weissenberger *et al.*, claims.

4. In particular, PECO notes that, in paragraph 75(a) of the First Amended Complaint, Weissenberger, *et al.* have now added language that alleges that: "PECO applied the improper tariffs overcharging the Complainants for electric utility service." Yet nowhere else in the 22-page First Amended Complaint (comprised of 76 numbered paragraphs and at least 30 numbered subparagraphs) do Weissenberger, *et al.* provide any explanation or further information on this claim. At no place in the First Amended Complaint do Weissenberger, *et al.* state which tariff or rates PECO should have applied to them. At no place do Weissenberger, *et al.* state any factual or legal basis to support the idea that they were ever being charged on the wrong rate or tariff. Instead, as far as PECO can tell, the entirety of the "improper tariff" claim is the single-sentence conclusory statement in paragraph 75(a). This should not be allowed.

5. Indeed, Pennsylvania Rule of Civil Procedure 1019(i) states that: "When any claim or defense is based upon a writing, the pleader shall attach a copy of the writing, or the material part thereof . . ." PECO's tariff is a "writing" and that, if a claimed violation of it forms the basis of the Complaint, should be attached to the Complaint. PECO recognizes that both it and the Commission have access to PECO's overall tariff – this is not a matter of access, but of

specificity. This matter will proceed more fairly and expeditiously if Weissenberger, *et al.* are required to actually state which portion of the tariff they claim is being violated. The Pennsylvania rules, by requiring that referenced documents be attached to the pleading, require that level of specificity in pleading.

6. Paragraph 75(d) of the First Amended Complaint suffers from a similar infirmity. Paragraph 75(d) of the First Amended Complaint claims that: “PECO violated its tariffs when it failed to bill the accounts at insufficient intervals.” Yet nowhere in the First Amended Complaint is there any other information or discussion regarding the periodicity of PECO billing. The claim essentially is contained in the single conclusory statement of paragraph 75(d).

7. Other portions of the First Amended Complaint also suffer from a lack of specificity, albeit not to the same degree as paragraphs 75(a) and (d). For example, paragraph 75(c) claims that: “PECO violated its tariffs by failing to bill the Complainants and notify Complainants of the accrued arrearages.” The First Amended Complaint does provide substantial information on the Complainants’ view that, when PECO billed and notified Complainants’ agent ConServe of the accrued arrearages, that did not constitute billing or notice to Complainants. What is missing, however, is any specificity as to Complainants’ claim that this activity violated *PECO’s tariff*. Which rule or rate do Complainants claim was violated by this putative activity? Complainants have made the specific claim that PECO’s actions “violated its tariffs”; in order to be allowed to proceed with that claim Complainants should at a minimum be required to state which tariff rule or rate is claimed to have been violated.

8. Although the First Amended Complaint is more specific than the initial Complaint, allowing this matter to proceed with the First Amended 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 to include the claim that “PECO applied the improper tariffs overcharging the Complainants for electric utility service,” then Complainants must provide background information that describes that claim with some degree of specificity beyond that mere unsupported conclusion. If this proceeding is to include a claim that “PECO violated its tariffs when it failed to bill the accounts at insufficient intervals,” then the Complainants also must provide background information to describe that claim. Allowing this matter to proceed to hearing without background on the facts underlying those claims would be a waste of the resources of the Commission and the parties because, if Complainants are later allowed to expand the scope of their claims beyond those matters specifically set forth in the Complaint, the regulatory litigation will inevitably develop in a hopscotch fashion.

9. PECO also alleges that, if this matter is allowed to proceed with the First Amended 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 regarding “improper application of tariffs” and “tariff violation due to improper periodicity of billing” for which no supporting information is provided in the PUC Complaint, but which instead will be “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 before the Commission is allowed substantial latitude regarding the level of specificity required in the initial pleadings. However, that Commission practice is discretionary, and the latitude is generally allowed because the Complainants are *pro se*, may not have complete records regarding their claims, and are generally not schooled in the law or able to articulate their claims with precision. That is not the case here. This Complainant is represented by accomplished counsel who has extensive records regarding its claims, and has exhibited an ability to articulate certain of its claims

extensively and with great specificity. PECO respectfully submits that for the reasons set forth in this Preliminary Objection, the Commission should exercise its discretion in this case to order Weissenberger, *et al.* to file a Complaint that sets forth with specificity the factual background not just for some of the causes of action alleged in the First Amended Complaint, but supporting each and every liability issue that Weissenberger, *et al.* intend to pursue before the PUC. Weissenberger, *et al.* should not be allowed to make broad allegations that PECO has “applied the improper tariffs” without providing information on which tariff provisions are being called into question, nor should they be allowed to claim that PECO “violated its tariffs” with inappropriate billing intervals without providing any further description information regarding that claim.

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. 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 – which means that Weissenberger, *et al.*, have already conducted a factual investigation to support these allegations and so verified to the civil court . Weissenberger, *et al.* have already taken large parts of the civil complaint and essentially cut-and-pasted the into the First Amended Complaint. It will not be burdensome to Weissenberger *et al.* to require them to parse the civil complaint and, instead of simply copying the civil pleadings, tailor the complaint so that it pleads PUC-jurisdictional complaints with sufficient specificity to allow this matter to proceed with full knowledge, by all parties and the Commission, of which claims are being made and the underlying basis for those claims.

**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,

A handwritten signature in black ink, appearing to read "Ward Smith", written over a horizontal line.

Ward Smith  
Counsel for PECO Energy Company  
2301 Market Street, S23-1  
Philadelphia, PA 19103  
(215) 841-6863  
ward.smith@exeloncorp.com

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**GUNTRAM WEISSENBERGER,  
ET AL.**

v.

**PECO ENERGY COMPANY**

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**DOCKET NO. C-2010-2182281**

**VERIFICATION**

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: August 11, 2010

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DOCKET NO. C-2010-2182281

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 overnight delivery (Federal Express), 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, August 11, 2010.



Ward Smith  
Counsel for PECO Energy Company  
2301 Market Street, S23-1  
Philadelphia, PA 19103  
(215) 841-6863  
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**PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU**

**Exhibit A**

**PECO's Original Preliminary Objection  
Filed July 7, 2010**

**Legal Department**

Exelon Business Services Company  
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Philadelphia, PA 19101-8699

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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

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

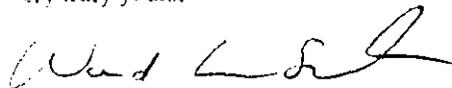
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Very truly yours,



Ward Smith  
Counsel for PECO Energy Company

Enc.

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

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**GUNTRAM WEISSENBERGER,  
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**DOCKET NO. C-2010-2182281**

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**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  
2301 Market Street S23-1  
Philadelphia, PA 19101-8699  
215-841-6863  
ward.smith@exeloncorp.com

**BEFORE THE  
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**GUNTRAM WEISSENBERGER,  
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**DOCKET NO. C-2010-2182281**

**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.<sup>1</sup>

4. The civil complaint, however, raised numerous other “liability issues.”<sup>2</sup> 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

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<sup>1</sup> 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.

<sup>2</sup> 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,<sup>3</sup> 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);

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<sup>3</sup> 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.

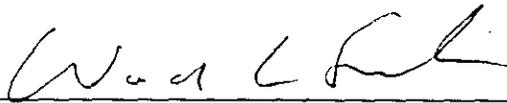
11. PECO recognizes that, normally, a Complainant is allowed free choice to allege, or to not allege, whatever claims it wishes to make in a Complaint. PECO also recognizes that Weissenberger, *et al.* may have abandoned some of the liability theories set forth in the civil complaint, and that the choice 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,

A handwritten signature in black ink, appearing to read "Ward Smith", is written over a horizontal line.

Ward Smith  
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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

GUNTRAM WEISSENBERGER,  
ET AL.

v.

PECO ENERGY COMPANY

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DOCKET NO. C-2010-2182281

VERIFICATION

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

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

GUNTRAM WEISSENBERGER,  
ET AL.

v.

PECO ENERGY COMPANY

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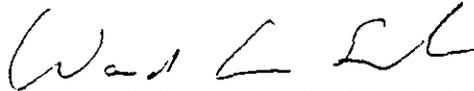
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CERTIFICATE OF SERVICE

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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