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August 18, 2010

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

VIA HAND DELIVERY

RE: Digital 833 Chestnut, LLC v. PECO Energy Company, Docket No. C-2008-2076610

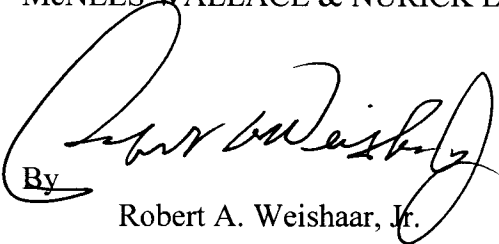
Dear Secretary Chiavetta:

On behalf of Digital 833 Chestnut, LLC, enclosed for filing with the Pennsylvania Public Utility Commission ("PUC" or "Commission") are the original and three (3) copies of the Petition For Leave To Withdraw Complaint, in the above-referenced proceeding.

As shown by the attached Certificate of Service, all parties to this proceeding are being duly served. Please date stamp an extra copy of this transmittal letter and Petition, and kindly return them for our filing purposes. Thank you.

Sincerely,

McNEES WALLACE & NURICK LLC

By  Robert A. Weishaar, Jr.

Counsel to Digital 833 Chestnut, LLC

lmc

Enclosure

c: Administrative Law Judge Herbert Smolen (via E-mail and First-Class Mail)
Certificate of Service

www.mwn.com

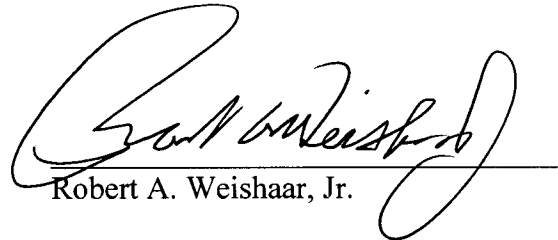
HARRISBURG, PA • LANCASTER, PA • STATE COLLEGE, PA • HAZLETON, PA • COLUMBUS, OH • WASHINGTON, DC

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of Section 1.54 (relating to service by a participant).

VIA E-MAIL AND FIRST-CLASS MAIL

Ward L. Smith, Esq.
PECO Energy Company
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699
ward.smith@exeloncorp.com



Robert A. Weishaar, Jr.

Dated this 18th day of August 2010, in Harrisburg, Pennsylvania.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DIGITAL 833 CHESTNUT, LLC	:	
	:	
v.	:	DOCKET NO. C-2008-2076610
	:	
PECO ENERGY COMPANY	:	

PETITION FOR LEAVE TO WITHDRAW COMPLAINT

Pursuant to Section 5.94 of the Pennsylvania Public Utility Code, 52 Pa. C.S. § 5.94, Complainant Digital 833 Chestnut, LLC ("Digital 833" or "Complainant") respectfully petitions the Commission, through Presiding Administrative Law Judge Herbert Smolen, for leave to dismiss its Complaint against PECO Energy Company. PECO and Digital 833 have reached an amicable resolution of this matter fully resolving the controversy. Therefore, it is in the public interest to grant Digital 833's request to withdraw the Petition.

I. Procedural History

On November 18, 2008, Digital 833 filed a formal complaint ("Complaint") against PECO Energy Company ("PECO"), Philadelphia Gas Works, and UGI Energy Services, Inc. ("UGIES") (collectively "Respondents"). The Original Complaint was separated and docketed as three individual proceedings. After several months of litigation, Respondents filed motions to dismiss the Original Complaint, and the Administrative Law Judge assigned to the Original Complaint issued his Initial Decision on July 17, 2009, granting the motions to dismiss. On March 25, 2010, the Commission issued its Opinion and Order, reversing the July 17 Initial Decision and remanding for further proceedings.

On June 23, 2010, Respondents and Complainant appeared before Administrative Law Judge Herbert Smolen, who convened a Prehearing Conference to discuss all pending matters

and adopt a procedural schedule. On July 21, 2010, Judge Smolen issued a Prehearing Order to govern this proceeding.

II. Petition to Withdraw

Pursuant to the Procedural Order, the parties have engaged in discovery. Digital 833 was due to file testimony today, August 18. However, Digital 833 and PECO have reached an agreement that disposes of Digital 833's claims against PECO. Accordingly, Digital 833 respectfully requests that the Commission authorize dismissal of the Complaint against PECO.

Section 5.94 of the Pennsylvania Public Utility Code 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 the other parties. The petition must set forth the reasons for the withdrawal. A party may object to the petition within 20 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.

The withdrawal of Digital 833's Complaint is appropriate for several reasons. First, PECO and Digital 833 have reached a mutual understanding to resolve the dispute raised by Digital 833's Complaint. Second, allowing withdrawal of Digital 833's Complaint will conserve the resources of the parties and the Commission by avoiding the need for additional litigation proceedings. Third, PECO and Digital 833 are the only parties to this Complaint proceeding. No other entity can claim harm or prejudice as a consequence of the withdrawal. Therefore, it is in the public interest that the withdrawal be granted.

PECO has authorized Digital 833 to state that it joins in this request and will shortly file a statement to that effect with the Commission.

III. Motion to Suspend Procedural Schedule

As set forth above, Administrative Law Judge Smolen issued a Prehearing Order in this proceeding on July 21, 2010, which set forth various filing deadlines and requirements. Among the deadlines, the Prehearing Order requires that Direct Testimony by Complainants was due on or before August 11, 2010. Prior to that deadline, the parties agreed, and Judge Smolen had accepted, to delay the deadline for Complainant's Direct Testimony until August 18, 2010. The Prehearing Order also sets forth subsequent deadlines for Respondent's Testimony, and any necessary Rebuttal Testimony. In light of the fact that this Petition to Withdraw is being filed on the same date on which Complainant's Direct Testimony is due, and because of the other impending deadlines, Digital 833 requests that the Prehearing Order schedule be suspended while this Petition is being considered.

IV. Conclusion

WHEREFORE, Digital 833 Chestnut, LLC respectfully requests that it be permitted to withdraw its complaint against PECO Energy Company with prejudice.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 

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Dated: August 18, 2010

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