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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. Philadelphia Gas Works; Docket No. C-2008-2076235

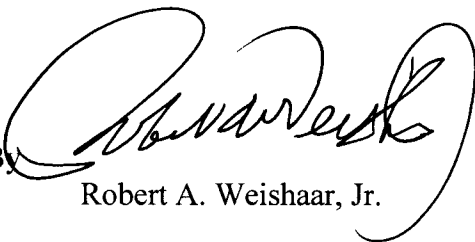
Dear Secretary Chiavetta:

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

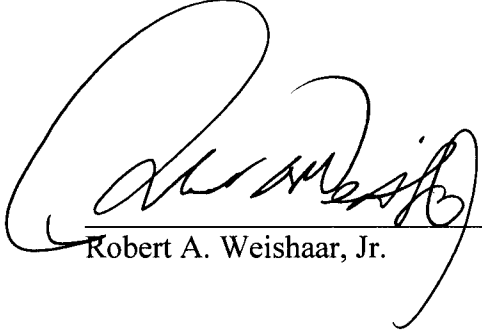
HARRISBURG, PA • LANCASTER, PA • STATE COLLEGE, PA • HAZLETON, PA • COLUMBUS, OH • WASHINGTON, DC

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

Laureto A. Farinas, Esq.
Philadelphia Gas Works
800 West Montgomery Avenue
Philadelphia, PA 19122
laureto.farinas@pgworks.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-2008-2076235
	:	
PHILADELPHIA GAS WORKS	:	

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 for leave to dismiss its Complaint against Philadelphia Gas Works, without prejudice to refiling.

I. Procedural History

On November 18, 2008, Digital 833 filed a formal complaint ("Complaint") against PECO Energy Company ("PECO"), Philadelphia Gas Works ("PGW"), 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. Factual Background for UGIES

PGW was the Natural Gas Distribution Company ("NGDC") providing gas service in the area where Complainant received natural gas service. Prior to November 2, 2005, Complainant was responsible for payment of all of its natural gas bills. However, on November 2, 2005, Complainant, through its property manager at the time, PAMI Renaissance Properties, Inc., entered into a contract with Celeren Corporation ("Celeren"). Complainant would make agreed-upon flat monthly payments to Celeren in lieu of paying the energy bills directly. Celeren would then pay the actual amount of the Energy Bills to the various Respondents, including UGIES. However, by early 2008, unbeknownst to Complainant, Celeren began failing to pay the energy bills to Respondents. Complainant was forced to directly pay the Energy Companies monies, which Complainant believed in good faith, had already been remitted by Celeren to the Energy Companies on behalf of Complainant.

The crux of the Original Complaint against Respondents was that they should have known and understood that Celeren was responsible for remitting payment to them for the gas and electric service for the Property. However, at no time did Respondents inform Complainant that the various accounts were delinquent. Based upon these facts, Complainants allege that Respondents, including PGW, breached duties owed to Complainant under Pennsylvania law and Commission regulations, and that Complainant is entitled refunds.

III. Petition to Withdraw

Pursuant to the Procedural Order issued by Administrative Law Judge Smolen, the parties have engaged in discovery, and some additional facts have come to light as a result. Nevertheless, in the course of reviewing the available documents, it has become clear that Celeren's role in the legal and factual issues may be essential to Complainant's allegations

against PGW, and that more information and documentation is necessary in order to conclusively prove the merits of Complainant's position with respect to PGW. However, Celeren is currently engaged in federal bankruptcy proceedings, affording Celeren significant protections, including some which preclude Complainants from obtaining documentation—or relief—from Celeren. It is Complainant's belief that, absent the critical information held by Celeren over the period in question, adequate support for Complainant's legal and factual assertions against PGW may not exist.

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.

As set forth above, Complainants respectfully submit that, while many questions have been answered and information supplemented by the discovery obtained thus far from PGW, the legal impediments preventing Complainant from having access to information held by Celeren has effectively foreclosed any meaningful opportunity for Complainants to fully develop its complaint. For this reason, Complainant respectfully petitions the Commission for leave to withdraw its Complaint against PGW at this time.

However, Complainant is not in any fashion stipulating that the legal and factual grounds upon which its Complaint are based lack merit and strongly urges the Commission to permit Complainant to withdraw the Complaint without prejudice to later refiling, if it is determined that sufficient additional facts so warrant. Neither Complainant nor PGW will be unduly burdened by a withdrawal of the Complaint at this stage in the proceeding, and whether or not

the Complaint is revived at a later date will be determined, in the interest of justice and equity, only after the protections currently afforded Celeren permit a full and robust record.

Complainant, therefore, respectfully requests that the Commission grants its petition for leave to withdraw this Complaint without prejudice to refiling at a later date.

IV. 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, 2010.¹ 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 until such a time as the instant Petition is approved.

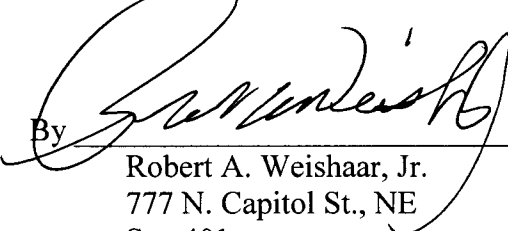
¹ The parties have since agreed, and Judge Smolen has accepted, to delay the deadline for Complainant's Direct Testimony until August 18, 2010.

V. Conclusion

WHEREFORE, it is respectfully requested that Digital 833 Chestnut, LLC be permitted to withdraw its complaint against Philadelphia Gas Works without prejudice to later refiling.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 

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Dated: August 18, 2010

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