

Legal Department

Exelon Business Services Company
2301 Market Street/S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699

Telephone 215.841.4000
Fax 215.568.3389
www.exeloncorp.com

Business Services
Company

Direct Dial: 215.841.6863

February 14, 2011

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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

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

Dear Secretary Chiavetta:

Enclosed for filing with the Commission is an original and three (3) copies of the Prehearing Conference Memorandum of PECO Energy Company.

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. I have enclosed a Certificate of Service showing that a copy of the above document was served on the interested parties.

Very truly yours,



Ward L. Smith
Counsel for PECO Energy Company

WLS/mb

Enc.

cc: Administrative Law Judge Dennis J. Buckley
Certificate of Service

Ms. Ferrier is a Regulatory Assessor at PECO who is expected to testify regarding the Weissenberger *et al.* account and billing history.

Mr. Frank Jiruska
PECO Energy Company
2301 Market Street
Philadelphia, PA 19103
215-841-4000

Mr. Jiruska is Director of Energy and Marketing Services at PECO who will testify with regard to the Weissenberger *et al.* account and service history, as well as certain matters related to PECO practice in interacting with Electricity Generation Suppliers and with customer agents.

Mr. Scott Neumann
PECO Energy Company
2301 Market Street
Philadelphia, PA 19103
215-841-4000

Mr. Neumann is a Rates Engineer at PECO who will testify with regard to PECO's tariff and to PECO practice in interacting with Electricity Generation Suppliers and with customer agents.

Mr. John McCawley and/or Ms. Carol Reilly
PECO Energy Company
2301 Market Street
Philadelphia, PA 19103
215-841-4000

Mr. McCawley is PECO's Director of Energy Acquisition and Ms. Reilly is PECO's Manager of Energy Acquisition Operations. One or both will testify regarding

PECO practice in interacting with Electricity Generation Suppliers and with customer agents.

PECO may substitute other witnesses with the requisite technical expertise, depending upon scheduling availability. PECO also may supplement this list if additional issues surface in this proceeding.

(c) Joinder

3. As PECO understands the scope of this proceeding, it will resolve only issues related to the relationship of PECO Energy and its customers, Weissenberger et al. However, if the scope of the proceeding is expanded to include a substantive determination of the rights of ConServe, then it may be necessary to join ConServe in this matter. Moreover, PECO notes that resolution of the landlord/tenant issues raised in the Amended Complaint may require evaluation of the rights of certain tenants under the Public Utility Code. At this time, PECO anticipates that such evaluation will only be for the purposing of informing the Commission's evaluation of the PECO/Weissenberger issues, and thus will not require the joinder of other parties. However, if the scope is expanded to explicitly determine the rights of such tenant third parties, joinder may be necessary.

(d) and (e) List of Issues and Sub-Issues and Evidence

4. The scope of issues to be determined in this proceeding is in part driven by the order of the civil court, which ordered Weissenberger *et al* to plead all liability issues before the Commission, and in part by the Commission's jurisdiction, which may limit its ability to hear certain claims. However, on the basis of the Amended Complaint, PECO expects at least the following issues to be raised by Weissenberger *et al* in their evidentiary case:

- a. Whether Complainants are Landlord Ratepayers under 66 Pa. C.S. 1533 and, if so, what rights and obligations fall upon them as Landlord Ratepayers.
- b. Whether Complainants are also "customers" under the Public Utility Code and PECO's tariff and, if so, what additional rights and obligations fall upon them.
- c. Whether PECO applied an improper tariff or rate to service to the complainants.
- d. Whether PECO otherwise violated its tariff or a Commission regulation.

5. PECO believes that, in addition to the issues as framed in the Amended Complaint, the following are the primary issues and sub-issues that will be addressed in this proceeding.

- (a) Whether PECO provided service to Weissenberger, et al., and whether PECO received payment for those services. PECO expects to address this issue by having its Ms. Ferrier present the Weissneberger account statement, which will demonstrate that PECO provided utility service to the customer but has not yet received payment for that service.

(b) What are the relevant rules and procedures for utility interaction with Electric Generation Suppliers (EGS) and how those rules have been implemented. PECO expects to address this issue by having Mr. Neumann and/or Mr. McCawley and/or Ms. Reiley present testimony as to PECO's procedures for interacting with EGS's, its Tariff regarding the same, and the source of those procedures in Commission law and practice. This testimony will show that, in order to qualify as an EGS, an entity must register with the Commission and that the interaction with between the EGS and the utility is thereafter primarily conducted pursuant to a clearly defined electronic data interchange (EDI) protocol.

(c) What are the relevant rules and procedures for utility interaction with customer agents who fill a role other than Electric Generation Supplier and how those rules have been implemented. PECO expects to address this issue by having Mr. Neumann and/or Mr. Jirusak present testimony as to PECO's procedures for interacting with non-EDS agents of customers. This testimony will show that customers frequently designate a third party to act as their agent other than as an EGS, and that in those situations the interactions do not occur through the EGS/EDI protocol, but rather take place with the customer's management agent effectively stepping into the customer's shoes for communication and interaction with the utility.

(d) Whether ConServe was acting as an Electric Generation Supplier or as a non-EGS agent. PECO expects to address this issue through the testimony of Mr. McCawley, Mr. Neumann and/or Mr. Jiruska, with that testimony demonstrating that ConServe did not register as an EGS or engage in transactions through the EDI protocol, but that ConServe instead simply acted as a management agent for the customer.

Additional issues or sub-issues may develop as PECO conducts discovery in this case or upon review of the other parties' testimony.

(f) Discovery and PECO's Outstanding Preliminary Objection

6. In general, PECO proposes that the normal Commission discovery rules and procedures, as set forth at 52 Pa. Code § 5.321 et seq., should be used in this docket.

Discovery has begun in this proceeding. On Friday, December 10, 2010, Weissenberger *et al.* served PECO with extensive discovery. PECO has not yet answered that discovery. When the discovery was served in December, counsel for Weissenberger agreed, due to the pendency of the December holidays, to extend the due date for the served discovery until January 17, 2011. Counsel later agreed to a second extension, to February 10, 2011. PECO was unable to provide answers by either of the agreed-upon dates.

PECO continues to research the answers to this discovery, and expects to provide complete answers shortly. Because this Commission proceeding is in its very early stages, PECO does not believe that Weissenberger, *et al.* are prejudiced by this delay, with one possible exception. PECO's outstanding Second Preliminary Objection for a More Specific Pleading requests that Weissenberger, *et al.* be required to specify the precise aspects of PECO's tariff that it claims PECO violated. PECO recognizes that its

answers to discovery may help to inform Weissenberger, *et al.* in formulating that argument. PECO therefore recommends setting a new deadline, after PECO provides its full answers to the Set I discovery of Weissenberger, *et al.*, by which time an Amended Complaint would need to be filed that specifies the terms of PECO's tariff that are claimed to be violated. PECO believes that 20 days after receipt of PECO's answers will be sufficient time for Weissenberger, *et al.* to formulate and articulate that argument. PECO requests that the articulation be in the form of a Second Amended Complaint in which Weissenberger *et al.* identify with specificity which portion of PECO's tariff is claimed to have been violated, with copies of the relevant pages of the tariff attached to the Second Amended Complaint.

Conclusion

PECO respectfully requests that the ALJ issue an Order establishing the procedural matters as set forth in this prehearing conference memorandum.

Respectfully submitted,



Ward Smith
Assistant General Counsel
Exelon Corporation
Counsel for PECO Energy
215-841-6863
ward.smith@exeloncorp.com

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PA PUBLIC UTILITY COMMISSION
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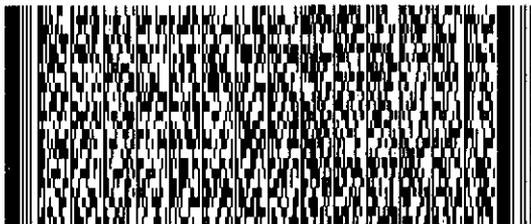
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